Submitted Oct 27 1869

Affirmed and assigned to Miller J.

Field J. 3.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 176.

AVENDANO BROTHERS, PLAINTIFFS IN ERROR,

vs.

EDWARD J. GAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 6, 1867.

SUPREME COURT OF THE UNITED STATES.

No. 176.

AVENDANO BROTHERS, PLAINTIFFS IN ERROR,

vs.

EDWARD J. GAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Citation to Ed. J. Gay and Ed. J. Gay & Co	5	2
Marshal's return	6	3
Judgment by default	7	3
Answer of Ed. J. Gay	8	3
Affidavit for commission	9	4
Motion and order for commission	9	4
Interrogatories for plaintiffs	10	4
Letter "E"	11	5
Notice to cross-interrogatories and marshal's return	12	5
Return to commission marked "E"	13	6
Deposition taken under commission	14	6
Deposition of J. M. Rils	15	7
Amended answer to E. J. Gay	17	8
Return to commission marked "K"	18	8
Interrogatories annexed to commission	19	8
Cross-interrogatories annexed to commission	21	10
Deposition taken under commission	23	11
Deposition of John W. Austin	24	11
Return to commission marked "F"	28	13
Interrogatories annexed to commission	29	13

INDEX.

	Original.	Print.
Cross-interrogatories annexed to commission	30	14
Deposition taken under commission	32	15
Deposition of James L. Cole	33	15
Note of evidence	42	19
PLAINTIFF'S EVIDENCE.		
Document A, (contract)	42	19
B, (notice to J. B. Austin)	46	20
D,	48	21
E, (letter)	48	21
A A, (testimony of John W. Austin)	49	22
F, (testimony of Judge Cole)	52	23
Defendant's evidence	52	23
Document G, (deed)	52	23
H,	62	28
I, transcript of suit No. 885, 5th judicial District Court	64	20
K	103	48
L	103	48
Hearing and order continuance	104	48
Cause resumed and submitted	104	48
Bill of exception	105	49
Petition for writ of error	109	50
Bond for writ of error	110	51
Statement of facts	112	51
Document "C," sheriff's notice to John W. Austin	115	53
Clerk's certificate	117	54
Writ of error	118	54
Citation in error and service	119	55

1 * Circuit of the United States, fifth circuit and district of Louisiana.

Petition.—Filed January 9, 1867.

AVENDANO HERMANOS
vs.
ED. I. GAY *et al.*
} No. 5,109.

To the Honorable the Judges of the Circuit Court of the United States for the fifth circuit and district of Louisiana.

The petition of Peregrine Avendano & Theodomiro Avendano, citizens of Spain and who compose the commercial firm of Avendano Hermanos respectfully shews: that Edward I. Gay, a citizen of the State of Louisiana, who alone composes the firm of Edward I. Gay & Co., and Allen Jumel, a citizen of the State of Louisiana, and who is sheriff of the parish of Iberville, are in solido, indebted unto your petitioners in the sum of thirty-five hundred dollars with legal interest, viz: five per cent. per annum from judicial demand, for this to wit: Your petitioners were the merchants and factors of

2 Austin & Adams, partners engaged in the cultivation of a plantation in the parish of Iberville, that during the years 1865 and 1866, your petitioners furnished supplies for the plantation and made advances to said Austin & Adams to enable them to cultivate the plantation and make a crop; that the supplies thus furnished and the advances made exceeded the sum of thirty-five hundred dollars and for the payment thereof, your petitioners had a lien and privilege on the crop raised on said plantation by Austin & Adams.

Your petitioners shew, that on the 26th October, 1866, the said Austin & Adams having made a crop of about thirty acres of sugar cane, and finding themselves unable to pay their indebtedness to your petitioners, sold and transferred said thirty acres of sugar cane to your petitioners, and found a purchaser therefor, to wit: Mr. James L. Cole, of the parish of Iberville, and directed and authorized your petitioners to sell said sugar cane to Mr. Cole, and to credit them with the proceeds thereof.

Now your petitioners shew, that on the 26th October, 1866, they sold said thirty acres of sugar cane to Jas. L. Cole, for the sum of thirty-five hundred dollars, and he paid your petitioners at the time of the purchase one thousand dollars in cash, and gave his

3 note for $2,500 payable on the 1st January, 1867, with the understanding that he should have until that time to take possession of and receive the delivery of the cane.

Now your petitioners shew, that previous to the 1st Jan'ry, 1867, to wit: on the 17th Dec'm., 1866, and after the said cane had been seperated from the soil and put in windrow for preservation, the said Ed. I. Gay & Ed. I. Gay & Co., plaintiffs in a suit against Austin & Adams pending before the District Court of the parish of Iberville, issued executory process against a certain tract of land therein discribed, and the said Ed. I. Gay & Ed. I. Gay & Co., and Allen Ju-

mel, sheriff of the parish of Iberville, seized the aforesaid tract of land, and the aforesaid thirty acres of canes.

Now your petitioners shew, that the aforesaid seizure of the cane is illegal and wrongful because said cane was not subject to said executory process, and because before the seizure it had been transferred by Austin & Adams to your petitioners, your petitioners shew that after the seizure as aforesaid, they notified Edward I. Gay & Allen Jumel, sheriff of the facts herein recited and requested them to release from seizure the aforesaid cane, but they refused so to do and still continue to hold said cane under seizure. Now your
4 petitioners shew, that by reason of said seizure, they were unable to deliver to Mr. James L. Cole, on 1st Jan'y, 1867, the aforesaid cane and he demanded the rescision of the contract he had made with your petitioners, and your petitioners returned to him the one thousand dollars and the note for $2,500 as aforesaid. Your petitioners shew, that said cane was of the value of $3,500 and upwards, that by the aforesaid illegal acts of Ed. I. Gay, E. I. Gay & Co., and Allen Jumel, sheriff of the parish of Iberville, they have suffered damages in the sum of thirty-five hundred dollars. The premises considered, they pray that Ed. I. Gay & Ed. I. Gay & Co., and Allen Jumel, sheriff of the parish of Iberville, be cited to answer this petition and condemned in solido to pay your petitioner the sum of thirty-five hundred dollars with legal interest at the rate of five per cent. per annum until paid, and costs.

And petitioners pray for general relief.

(Signed) GEO. L. BRIGHT,
Counsel for Peti't.

5 *Citation to Ed. I. Gay and Ed. I. Gay & Co.*

AVENDANO HERMANOS
vs.
ED. I. GAY *et al.*
No. 5,109.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon Edward I. Gay individually, and the firm of Edward I. Gay & Co., composed of said Edward I. Gay alone and a citizen of the State of Louisiana, to comply with the demand of Avendano Hermanos, citizens of Spain, contained in the petition, of which a copy accompanies this citation, or to deliver their answer to the same, in the office of the clerk of the Circuit Court of the United States, fifth judicial circuit and District of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against them by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of February, 1867.

Witness the Honorable Salmon P. Chase, Chief Justice of the

Supreme Court of the United States of America, at the city of New Orleans, this 9th day of January, A. D., one thousand eight hundred and sixty-seven, and of the independence of the United States of America the 91st year.

[SEAL.] (Signed) CHS. CLAIBORNE, *Clerk*
By F. B. VINOT, *D'y Cl'k.*

6 Endorsed: No. 5,109. U. S. Circuit Court. Avendano Hermanos *vs.* Ed. I. Gay *et al.* Citation. Marshal's return. Received January 14th, 1867, and same day, month and year, served a copy of the within citation and petition of plaintiff, accompanying the same on Ed. I Gay, the defendant named herein, personally at his office, No. 27 Camp street, in this city. New Orleans, January 15th, 1867. Signed M. Egan, d'y U. S. marshal.

7 *Judgment by Default.—From minutes November term*, 1866.

NEW ORLEANS, *Friday, January* 25, 1867.

Court met pursuant to adjournment. Present, Hon. E. H. Durell dist. judge.

AVENDANO HERMANOS *vs.* ED. I. GAY *et al.* } No. 5,109.

On motion of Geo. L. Bright, esq., att'y for the plaintiffs, and on showing to the court that Edward I. Gay, one of the defendants, herein has failed to answer, tho' duly cited, ordered that judgment by default be entered against him.

Order default set aside.—From the minutes of January 29, 1867.

AVENDANO HERMANOS *vs.* ED. I. GAY *et al.* } No. 5,109.

On motion of Race Foster & E. T. Merrick, att'ys for Ed. I. Gay, ordered that the default herein entered against him be set aside, and that he have leave to file his answer.

8 Fifth Circuit and District of Louisiana, U. S. Circuit Court.

Answer of Ed. I. Gay.—Filed January 29, 1868.

AVENDANO HERMANOS *vs.* ED. I. GAY *et al.* } No. 5,109.

In this case the defendant, Edward I. Gay, comes, and for answer to plaintiff's petition says he denies generally and specially each and every allegation in the plaintiff's petition contained except what is hereinafter specially admitted, and specially denies that plaintiffs ever acquired any legal right to said sugar cane. This defendant

admits that he, said Ed. I. Gay, have obtained an order of seizure and sale against said Austin & Adams, but alleges that said order of seizure and sale was upon a title superior to any supposed claim of his, said plaintiff, should such claim be established which is denied as aforesaid; and he further specially denies that they have exercised their rights under their mortgage in any other manner than in conformity to law, or that said plaintiffs have any legal cause of complaint on account of their mortgage and the seizure under the same.

Wherefore the defendant prays that plaintiff's demand
9 may be rejected and the suit dismissed and for costs.

By RACE, FOSTER & E. T. MERRICK,
Att'y for Defendant, Ed. I. Gay.

United States Circuit Court, fifth circuit and district of Louisiana.

Affidavit for commission.—Filed February 8th, 1867.

AVENDANO BROS.
vs.
ED. I. GAY *et al.* } No. 5,109.

Geo. L. Bright, counsel for plaintiff, sworn, says that J. M. Rills is a material and important witness for pl'ff, and he resides in the parish of Iberville, town of Plaquemine, and more than one hundred miles from this court.

(Signed) G. L. BRIGHT.

Sworn to and subscribed before me February 8th, 1867.

(Signed) K. LOEW,
D'y Cl'k Dist. Court.

Motion and order from commission.—From the minutes of Feb'y 8, 1868.

AVENDANO BROS.
vs.
ED. I. GAY *et al.* } No. 5,109.

On motion of G. L. Bright, counsel for pl'ffs, it is ordered that a commission issue to J. W. Marcel, justice of the peace in the town of Plaquemines, parish of Ibervill, to take the testi-
10 mony of J. M. Rills, and that 20 days be allowed for the return thereof.

Before the United States Circuit Court for the fifth circuit and district of Louisiana.

Interrogatories.—Filed February 8, 1867, *and annexed to commission.*

AVENDANO BRO.
vs.
ED. I. GAY *et al.*

Interrogatories to be propounded to Mr J. M. Rills, a witness for plaintiffs, and a resident of the parish of Iberville, La., whose testimony is to be taken by virtue of a commission.

1. Look at the letter or notice hereto annexed and signed by Avendano Brothers, and addressed to Edward I. Gay and Mr. Allen

Junnel, and state when, where, and on whom you served a duplicate, original or a copy thereof. Did you make any writing of the manner of service? If yea, where?

2. State all you know that may be of service to the plaintiffs.

(Signed) G. L. BRIGHT, *C.*

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original on file, and I further certify that the foregoing interrogatories have
11 been duly served on the attorneys of the defendant. E. I. Gay, and that no cross-interrogatories have been filed up to this date.

New Orleans, February 20, 1867.

(Signed) CHS. CLAIBORNE, *Clerk.*

(Signed) By F. VINOT, *Dy. Cl'k.*

Letter "E."—Filed Feb'ry 8, 1867, *and annexed to interrogatories.*

NEW ORLEANS, *Dec'r* 14*th*, '66.

To Mr. ED. I. GAY & to Mr. ALLEN JUMEL, sheriff of the parish of Iberville:

GENTLEMEN: You are hereby notified that the cane upon the plantation of Messrs. Austin & Adams, in the parish of Iberville, belongs to us, and was sold by us to James L. Cole, esq., on the 26th of October last. You have seized it; and we now notify you that if you do not immediately release the seizure, and if, by your seizure you prevent us from delivering it to Mr. Cole, we will hold you responsible for the damages we may suffer. The sale was made by us for $3,500. Should you not release the seizure on the receipt of this notice, we will immediately institute suit against you in the
12 U. S. Circuit Court for the district of Louisiana.

Very respectfully,

AVENDANO BROTHERS.

Rec'd the within on the 24th December, 1866, and served a copy of the same on Edward I. Gay and Allen Jumel, sheriff, by delivering to each of them in person a copy of the within notice, at the parish of Iberville, on the 24th December instant.

This 24th December, 1866.

J. M. RILLS,
Constable 2d Ward.

Cost, $1 00.

United States Circuit Court, district of Louisiana.

Notice to cross-interrogatories.

AVENDANO BRO'S
vs.
E. I. GAY *et al.* } No. 5109.

To E. I. GAY, defendant:

Take notice that the plaintiffs have this day filed interrogatories to witness therein named, copy of which accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within three days from the service thereof.

Clerk's office, New Orleans, Feb'y 8th, 1867.

(Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received February 8th, 1867, and on the 11th day of February, 1857; served a copy of this notice and of the interrogatories accompanying the same; on Geo. W. Race, esq., one of the firm of
13 Race, Foster & Merrick, esqs., the attorneys for defendants in the within-entitled suit, at their office, No. 5 Commercial Place in this city.

New Orleans, February 12th, 1867.

(Signed) M. EGAN,
U. S. Marshal.

Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

E.—Return to commission.—Filed February 29th, 1867.

To JOHN MARCEL, justice of the peace in the town of Plaquemine, parish of Iberville:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. M. Rills, witness, and him duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in a case now depending in the said court wherein Avendano Hermanos are plaintiffs and Ed. I. Gay *et al.* is defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and also this writ.

14 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 20th day of February, Anno Domini 1867, and the 91st year of the independence of the United States of America.

(Signed) CHAS. CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Cl'k.*

Deposition taken under commission.

UNITED STATES OF AMERICA, *State of Louisiana, Parish of Iberville.*

Deposition of witness taken and subscribed before me, John Marcet, a justice of the peace in and for the parish of Iberville, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such on the twenty-third day of Febuary, A. D, eighteen hundred and sixty-seven, between the hours of ten and eleven A. M. of said day, at the town of Plaquemine, in the parish of Iberville, State of Louisiana, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now pending in the hon'ble Circuit Court of the United States for the fifth judicial circuit holding
15 sessions in and for the district of Louisiana, wherein Avendano Hermanos are plaintiffs, and Edward I. Gay *et al.* are defendants, being numbered 5,109 on the docket, on the part of the plaintiffs, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose and say, and answer as follows, to wit:

In answer to interrogatory first: That he has examined the letter or notice now exhibited to him and annexed to this commission, signed by Avendano Bros. and addressed to Edward I. Gay and Allen Jumel, and states that he served a true copy thereof on the said Edward I. Gay and Allen Jumel, sheriff of the parish of Iberville, both in person, in the said parish of Iberville, on the twenty-fourth day of December, 1866. Witness further states that he made a return in writing on the back of said letter or notice at the time and place aforesaid, of the manner of said service, and signed the same as constable.

16 Second. Has stated all he knows of benefit to the parties.

(Signed) J. M. RILLS.

Sworn to and subscribed before me this 23d day of February, A. D. 1867.

(Signed) JOHN MARCOT,
Justice of the Peace.

THE STATE OF LOUISIANA, *Parish of Iberville.*

I, John Marcot, a justice of the peace in and for the parish of Iberville, State of Louisiana, duly elected, sworn, commissioned, and acting as such in and for the parish of Iberville, State aforesaid, do hereby certify and make known that the foregoing deposition of J. M. Rills, war taken before me on the twenty-third day of February, A. D. eighteen hundred and sixty-seven, at the time and place in the caption hereof mentioned. That the examinations, responses, and statements of the said deponent were reduced to writing by me, the said justice, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof, I, John Marcot, justice of the peace in and for 2nd ward, parish of Iberville, do hereunto set my hand at the town of Plaquemine, State of Louisiana, this 23rd day of Febuary, A. D. 1867.

JOHN MARCOT,
Justice of the Peace 2d Ward.

Fifth Circuit Court and district of Louisiana.

17 *Amended answers.—Filed May 2d, 1867.*

AVENDANO HERMANOS
vs.
ED. I. GAY *et al.* } No. 5,109.

In this case the defendant, Edward I. Gay, comes by leave of the court first granted and by way of amendment to his herein filed says: That by virtue of the proceedings had under said order of seizure and sale, he acquired at sheriff sale since the filing of his original answer, viz, on the 2d day of Febuary, 1867, one hundred and twenty-two one hundred and sixtieth undivided parts of said plantation, including the cane thereto attached by destination, and that as to the residue of said sugar cane, viz, thirty-eight one hundred and sixtieth undivided parts thereof, he has acquired the same by transfer and purchased from said Austin & Adams to accompany a lease of said undivided thirty-eight one hundred and sixtieth parts of said plantation for the present year, all of which acts have also been ratified and confirmed by said Austin & Adams.

Wherefore relying also upon the allegations of their original answer this defendant prays for judgment in his favor, and for costs and a trial by jury.

By RACE, FOSTER & E. T. MERRICK.

MAY 2D, 1867.

18 Let this amended answer be filed.
(Signed) E. H. DURELL, *Judge.*

Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

K.—Return to Commission.—Filed June 3d, 1867.

To HENRY DESOBREY, esq., a notary public, or to any justice of the peace in the town of Plaquemine, in the State of Louisiana:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you John W. Austin, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Avendano Bro's are plaintiffs and E. I. Gay *et al.* are de-

fendants; and the same examinations so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said
19 cause, and send also this writ. Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 16th day of May, Anno Domini 1867, and the 91st year of the independence of the United States of America.

(Signed) D. URBAN, *Clerk.*
By F. B. VINOT, *D'y Cl'k.*

In the U. S. Circuit Court.

Interrogatories annexed to commission.

AVENDANO BRO'S *vs.* E. I. GAY *et al.* } No. 5,109.

Interrogatories to be propounded to and answered under oath by John W. Austin, a witness for def., residing in the parish of Iberville in this State:

Int. 1st. Are you or not a member of the planting firm of Austin & Adams of the parish of Iberville? If yea, is or not the other member of said firm a connection of yours, and in what way?

Int. 2d. Have you or not been examined as a witness for plaintiffs in the above-entitled suit?

20 Int. 3rd. Were or not the defendants, Edward I. Gay & Co., the commission merchants of Austin & Adams? If yea, when did they begin and when cease to do their business?

Interrogatory 4th. If you have answered the last interrogatory affirmatively, then state the amount of the indebtedness of your said firm to defendants at the time you took your business from them, and if said indebtedness is not for supplies to your said plantation and for cash advanced to said Austin & Adams at sundry times to enable them to carry on their place, and were or not said supplies and advances furnished and made prior to their commencing business with [with] plaintiffs.

Int. 5th. Did or not Austin & Adams transfer their business whilst still indebted unto E. I. Gay & Co., and without their consent to the plaintiffs? If yea, when?

Int. 6th. From your knowledge of the plantation and seed cane raised thereon in 1866, belonging to Austin & Adams, was or not the whole of it required on said plantation to plant a fair crop for this year? Has or not the whole of it been planted on said plantation, how many acres of cane did it plant, and how many acres of plant cane was necessary on said plantation this year to make the place productive?

21 Int. 7th. Do you know any other fact, thing, or circumstance that will aid the defendant in the above entitled suit? If yea, state the same as fully as if thereto specially interrogated.

RACE, FOSTER & E. T. MERRICK,
Of counsel for deft's.

It is hereby agreed that a commission may issue herein to Henry Desobrey, esq., a notary public, or to any justice of the peace in the town of Plaquemine in this State, to take the deposition of John W. Austin, and that the attestation of said commissioner shall make full proof of his capacity to execute the same.

Avendano Bro's reserve all legal objections to the testimony, except to form and manner of taking the same.

May 15th, 1867.

G. L. BRIGHT, *Counsel.*
RACE, FOSTER & E. T. MERRICK,
Of Counsel for def'ts.

United States Circuit Court, New Orleans.

Cross-interrogatories annexed to commission.

AVENDANO BRO'S
vs.
E. I. GAY *et al.* } No. 5,109.

Cross-interrogatories to John W. Austin.

22 1st. Where did the firm of Edward I. Gay & Co. do business and reside when they were the merchants of Austin & Adams?

Did they advance any moneys and supplies for making the crop of sugar cane the subject of this suit? If yea, what moneys and supplies, give the dates?

Who furnished the means and supplies with which the sugar cane, the subject of this suit, was produced?

2nd. Should you state that Austin & Adams are or were indebted to Edward I. Gay & Co, state what arrangement Austin & Adams made with Edward I. Gay & Co. relative to such indebtedness? How was the account closed? Did Ed. I. Gay & Co. render Austin & Adams any account, if yea, annex it.

3. When you cut the cane, the subject of this suit, and when it was being produced, was it cultivated and raised for the purpose of planting on the same plantation, or was it raised and produced by you for sale, or to be used in the making of sugar? Was any of the cane intended for planting on the same plantation that produced it?

4. Before the defendant, Edward I. Gay, seized the cane did you not inform him that you had transferred it to Avendano Bro's who had sold it to Judge Cole? Did you not tell Mr. Gay that you did not intend and had not intended to use the cane for planting?

23 5. Are you now on the plantation that produced the cane? Was not the plantation bought by Mr. E. I. Gay? Upon what terms or agreement are you on the place? Did not Mr. Gay seize the cane with the intention of afterwards buying the plantation? Was not planting cane difficult to be had? After Mr. Gay seized the cane, did he not buy the plantation? Was the cane sold by the sheriff? If

yea, for what price, and who was the purchaser? Did not Mr. Gay use the cane?

6. Before or at the time of making your answers to the foregoing interrogatories and x-interrogatories, did you have any conversation with Mr. Gay, or with any person in his interest, relative to your answers? If yea, state fully the conversations.

7. State all you know that may be of service to Avendano Bro.

(Signed) J. L. BRIGHT.

Deposition taken under commission.

STATE OF LOUISIANA, *Parish of Iberville:*

Be it remembered that by virtue of the annexed commission from the hon'ble the United States Circuit Court, in a certain suit,
24 now pending in said court, wherein Avendano Bro's are pl'ffs, and E. I. Gay and *als.*, defendants, I, Joseph L. Petit, a justice of the peace in and for the parish of Iberville, State of Louisiana, duly commissioned and sworn as such, caused to come before me at my office, in the town of Plaquemine, on Thursday, the 30th day of May, 1867, John W. Austin, of lawful age, and domiciliated in the parish of Iberville, a witness on the part of the defendant in said cause; and the said witness being first by me duly sworn, according to law, to answer the truth to the interrogatories propounded to him in said cause, did depose and respond as follows: In answer to interrogatory first—

1st. Yes; my partner is my mother-in-law.

2d. I have been examined as a witness for plaintiffs.

3d. Messrs. E. J. Gay & Co. were our merchants from 1859 to 1862.

4th. We were at that time owing Messrs. E. J. Gay & Co.; do not know the exact amount, as we had no final settlement. The amount due them was for supplies and cash advanced, to enable us to work the plantation prior to the time we commenced business with the plaintiffs.

5th. Yes; they transferred their business to plaintiffs whilst
25 indebted to E. I. Gay & Co., without their consent, in the summer of 1862.

6. The whole of the cane raised on the place in 1866, was necessary to plant a fair crop for this year. All of it has been planted, and has planted fifty-two and one half acres. To make the place productive would require an annual planting of one hundred acres.

7. Before seizing the place, Mr. Gay said he would give us any reasonable time on the debt due him, if we would give him security, otherwise he said he would have to bring suit, as he feared he might lose his claim by remaining inactive, while others were bringing suit against the property. After the seizure and since Mr. Gay purchased, he has offered to relinquish the property to its formers owners, provided they would secure the payment of his debt at any reasonable time.

Answer to cross-interrogatories.

1st. The firm of Ed. I. Gay & Co. was estalished at St. Louis, but the greater part of our business was done with Mr. E. I. Gay, who resided in our inmediate neighborhood, in the parish of Iberville. Messrs. E. I. Gay & Co. did not furnish any supplies or money for working the crop of sugar cane, the subject of this suit.
26 Messrs. Avendano Brothers furnished the means and supplies with which said cane was produced.

2d. There has not been any final settlement between Austin & Adams and Edward I. Gay & Co. The account of E. I. Gay & Co. was rendered to May 1st, 1863, showing balance due them, eleven hundred and twenty-four 18-100 dollars, with a memorandum attached, stating that commissions on crops of 1861 and 1862 yet remained unsettled. Austin & Adams never furnished E. I. Gay & Co. with any statement of amount of sales of crops of those two years, and no arrangement was made to settle the account with Messrs. E. I. Gay & Co.

3d. If I could have obtained the necessary facilities for working the place, and could have made satisfactory arrangements with creditors and co-proprietors, we should probably have planted the cane, but failing to make such necessary arrangements, we found it best to sell the cane.

4th. Before Mr. Gay seized the cane, I did not inform him that we had transferred it to Messrs. Avendano Bro's. I did not tell him that I did not intend, and had not intended, to use the cane for planting.

5th. I am now on the plantation that produced the cane. Mr. Gay seized the plantation, together with the cane, and purchased $^{124}_{160}$ parts of the place at sheriff's sale. Austin & Adams are still
27 owners of $^{36}_{100}$ parts of the place, and have agreed with E. J. Gay & Co. to allow him to work the place. I am superintending the place for Mr. Gay. I did not know that Mr. Gay intended buying the plantation when he seized it. Mr. Gay has used the cane. Plant cane at that time was scarce.

6th. I have had no conversation with Mr. Gay, nor with any one in his interest, relative to my answers.

(Signed) JNO. W. AUSTIN.

Sworn to and subscribed before me this 30th day of May, A. D. 1867.

(Signed) J. L. PETIT,
Justice of the Peace.

I, Joseph L. Petit, a justice of the peace, and for the parish of Iberville, duly commissioned and sworn, hereby certify the foregoing depositions of John W. Austin, a witness in the case of Avendano Brothers *vs.* E. J. Gay and *als.*, pending in the United States Circuit Court, taken before me at the time and place mentioned in the caption hereof; that the responses and answers of the said deponent

were reduced to writing by me, and sworn to before me at the time and place aforesaid.

In testimony whereof, I have hereunto set my hand officially in the parish of Iberville, this 30th day of May, A. D. 1867.

(Signed) J. L. PETIT,
Justice of the Peace.

Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

28 *F.—Return to commission.—Filed May* 27, 1867.

To Mr. HENRY DESOBREY, justice of the peace in the town of Plaquemine, parish of Iberville, or to any other justice of the peace in the parish of Iverville:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you, Judge J. I. Cole, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Avendano Brothers are plaintiffs, and E. I. Gay and *al.* are defendants; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of
29 the Supreme Court of the United States, at the city of New Orleans, this 18th day of May, Anno Domini 1867, and the 91st year of the independence of the United States of America.

(Signed) D. URBAN, *Clerk.*
By F. B. VINOT, *D'y Cl'k.*

United States Circuit Court, New Orleans.

Interrogatories annexed to commission.

AVENDANO BRO'S
vs.
E. I. GAY & Co., *et al.* } No. 5,109.

Interrogatories to Judge Jas. L. Cole:

1st. Do you know the cane the subject of this suit? Did you purchase it; if yea, from whom and when?

2nd. Was it ever seized by E. I. Gay? if yea, when? Before Gay seized the cane, did you converse with him about the cane? if yea, state the conversation?

Did you get the cane; if nay, why? Had you paid for it? if yea, how, and to whom, was the am't paid by you refunded? if yea, by whom and for what reason?

3rd. State all you know that may be of service to plaintiffs.

(Signed) GEO. L. BRIGHT,
Counsel for Pl'ffs.

30 In the U. S. C. Court.

Cross-interrogatories annexed to commission.

AVENDANO BRO'S
vs.
E. I. GAY & Co., *et al.* } No. 5,109.

Cross-interrogatories to Judge J. L. Cole:

Int. 1st. If you have said you purchased the seed cane on the plantation of Austin & Adams, was it not standing in the field at the date of said transaction, and was it not sold as the property of Austin & Adams by Avendano Bro's, as their agents.

Int. 2nd. When the sheriff of your parish seized the plantation of Austin & Adams at the suit of E. J. Gay & Co., did you not voluntarily abandon the sale of said seed cane in accordance with privilege in your contract, and did you or any other party intervene in said suit of Gay *vs.* Austin & Adams in the parish of Iberville, and set up said sale or any privilege upon said seed cane?

Int. 3rd. Was there or not any legal obstacle in the way of plaintiffs herein intervening in said suit of Gay & Co., and setting up such claim and privilege, as they have therein, and would or not that have been the usual and correct way of testing their
31 rights.

Int. 4th. When you contracted with Austin & Adams through their agents, Avendano Bro's for the seed cane on their plantation, did you not apprehend its seizure by some creditor of Austin & Adams; did you not so advise Avendano Bro's, and in consequence of that liability did you not reserve to yourself the privilege of relinquishing the purchase, &c?

Int. 5th. Did you ever have possession of said seed cane, and remove it from the plantation of Austin & Adams? If yea, when?

Int. 6th. Has or not all the seed cane raised on the plantation of Austin & Adams in 1866, been planted there this year? If yea, how many acres did it plant, and was or not that cane sufficient to plant place properly for a good crop?

Int. 7th. Do you or not know any other fact, thing, or circumstance that will aid the defendants herein? If yea, state the same as fully as if thereto specially interrogated.

(Signed) RACE, FOSTER & E. T. MERRICK
Of Counsel for Def'ts.

It is hereby agreed that a commission issue herein, or any justice of the peace, in the town of Plaquemine, in this State, to take the deposition of Judge J. L. Cole, and that the attestation of said commissioner shall make full proof of his capacity to execute the
32 same, reserving to defendants the benefit of all legal objections, except as to the form and manner of taking the same.

May 16, '67.

(Signed) RACE, FOSTER & E. T. MERRICK,
Of Counsel for Def's.

Deposition taken under commission.

THE STATE OF LOUISIANA, *Parish of Iberville*:

Be it remembered that on this 22d day of May, A. D. 1867, by virtue of an order and commission, directed to Mr. Henry Desobrey, justice of the peace, in the town of Plaquemine, parish of Iberville, or to any other justice of the peace in the parish aforesaid, to summon before him and duly examine on oath Judge J. L. Cole on the interrogatories annexed to said commission, issued from the hon. the Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of La., and dated at the city of New Orleans, the 18th day of May, Anno Domini 1867; said commission having been issued in a case now depending in the said Circuit Court, wherein Avendano Brothers are plaintiffs and E. J. Gay *et al.* are defendants, I, Joseph Lucien, petit justice of the peace in and for the 2d ward, parish of Iberville, did call and cause to come
before me, at my office in the town of Plaquemine, in the pa-
33 rish of Iberville, Judge James L. Cole, personally known to
me, who, first being legally sworn by me, the said justice, true answers to make to the interrogatories and cross-interrogatories annexed to said commission, did answer as follows:

To the 1st int. I know the cane, the subject of this suit. I purchased it. The circumstances are as follows: A few days previous to my purcase of said cane, I wrote a note to Mr. J. W. Austin, asking if he would sell any of his cane. He answers he would let me have what I might want a bargain. About an hour afterwards he passed my house on his way to Plaquemine, and I stopped him, and asked him the terms. He answered that the price of the cane was to pay Avendano Brothers (the pl'ffs) for advances; that I could arrange with them for any terms of credit, and any time they chose to give me for the price I should agree with him for the cane would be satisfactory. I afterwards went and examined the cane. I tried to get the cane for a price less than thirty-five hundred dollars that he demanded; but he considered it would take that sum to pay his factors (the pl't'ffs;) Mr. Austin proposed to go to New Orleans and see the pl't'ffs. I went with him, and saw the pl't'ffs (in company
with Mr. Austin.) They agreed to take a thousand dollars,
34 my notes for $2,500, bearing 8 per cent. int., payable 1st Jan'y,
1867; $3,500 being the price I agreed with Mr. Austin to give him for the cane. I paid pl't'ffs one thousand dollars cash, and gave my notes for $2,500, as aforesaid. There was a written contract (a private act) passed between us, signed by Avendano Brothers, Austin & Adams, and witness.

Austin & Adams gave pl't'ffs in writing power to sell s'd cane, which I think was annexed to the original contract. Mr. Austin told me the cane had been advertised previously in a New Orleans paper for sale, but pl't'ffs, who had been authorized to advertise it, could find no purchaser. I purchased the cane the date of the original contract.

To the first cross-int. witness answers: That the cane was standing

in the field at the date of the purchase; that the cane had been the property of Austin & Adams, but that they gave the pl'ffs the right to sell it to pay themselves. I suppose that the legal title would be in Austin & Adams, with the absolute right under the written order of pl'ffs directed to [to] them by Austin & Adams to sell the cane, and pay themselves; of course, the balance, if any, after they were paid, would go to Austin & Adams. The cane was sold as the property of Austin & Adams by Avendano Bro's, to pay
35 themselves for advances, and they were authorized to act as agents of Austin & Adams in doing the same.

To the 2nd int. witness answers: The cane was seized by E. I. Gay, on ,' by the sheriff of the parish of Iberville. I never conversed with Gay about the cane before he seized it. The deputy sheriff who seized the cane was notified upon the plantation of Austin & Adams, when he went to seize the cane, by my wife, who happened to be there, that the cane was mine; and in the public advertisement in the Iberville paper of the sale of the plantation, it says that the cane is claimed as my property. I also notified the sheriff, Capt. Jumel, I would hold him responsible for damages if he sold the cane, and claimed it as mine. The sheriff afterwards told me he had required an indemnification bond for Mr. Gay to answer for damages if the cane was doubted to be mine. I did not get the cane, because it was seized by E. I. Gay. The price paid for the cane was refunded to me by Avendano Brothers, as I demanded that the contract should be cancelled.

To the 2nd cross-int. witness sayeth: I did not voluntarily abandon the sale when the plantation of Austin & Adams was seized at the suit of E. I. Gay & Co. I claimed the privilege reserved to me in the
36 contract about one or two days before the 1st January, 1867, the day of maturity of my notes, to break the same; pl'ffs paid me back the thousand dollars and gave me up my notes. I abandoned the sale because my means would not at that time permit me to have my money locked up in a law-suit, and I knew other cane that I thought I might perhaps get. If it had not been for this I would not have cancelled the contract, as I believed I had the legal right to make Mr. Gay pay heavy damages for what I considered his illegal action in seizing, as subject to his mortgage, cane severed from the realty. I was, besides, disappointed in getting any cane afterwards. I did not intervene in the suit of Gay *vs.* Austin & Adams in the parish of Iberville, because I had not cancelled the contract. I can't say, from my own knowledge, as to others, but believe that pl'ffs did not intervene in s'd suit and set up s'd sale, or any privilege upon s'd case.

To the 3rd int. witness sayeth: That in his answers to int. chief and x-int. he has stated all he knows.

To the 3rd cross-int. witness sayeth: That he would not perhaps be forced to respond to this, as his answer could only be deemed an opinion, of which the hon. the Circuit Court is the best judge
37 as to his powers; but by courtesy witness says, that Avendano Brothers could have intervened in the suit of Gay *vs.* Austin &

Adams, and set up their claim and privilege; and this is perhaps the usual way, but I do not think it is not the only way. It is one mode of testing rights, but perhaps not the only one. I cannot say that the usual mode is more correct than the one adopted by pl'ffs.

To the 4th cross-int. witness sayeth: When I contracted with Avendano Bro's, as per written contract, or rather before it was executed, I spoke with Mr. Austin upon the subject. I did not know entirely the condition of the business of Austin & Adams, but knew they were in pecuniary difficulty. Mr. Austin assured me positively that there would be no difficulty; that he had so arranged his affairs with his creditors that there would be no seizure of the cane or plantation, or attempt to seize the same. I spoke to him also about the wages due his freedmen, stating they were privileged. He told me he had paid them the greatest part due, and the balance he would pay with some cotton, or the price of it, that he had, and that I need apprehend no difficulty upon the subject. I however insisted upon the reservation being put in the contract that I should have the right of breaking the same if the cane were seized, as I thought
38 perhaps it might be, but did not fear the effects of any seizure after the cane was cut, but only before it might be cut and separate from the realty. If, however. I had really believed it would have been seized, I would not have taken the trouble and been at the expense of going to New Orleans to buy the cane. I put the resrvation in the contract from caution, believing what Mr. Austin told me, but believing at the same time that he might be mistaken, and that there might be an attempt to seize the cane.

To the 5th cross-int. witness sayeth: That the written contract shows the virtue of my possession. I never did remove the cane from the plantation of Austin & Adams. Mr. Austin offered to hire me his carts to assist in removing it when I should be ready to plant; but I told him I would not probably be ready till after January or the beginning thereof, and he offered to superintend the taking up and loading of the carts for a consideration; but I was not ready to plant the same until after it was seized. The cane was at my risk if lost by inundation, etc. Mr. Austin obliged himself to superintend the putting up of the cane. I went afterwards to examine if it was put up well; I afterwards sent my overseer, Mr. Dugas, to examine
39 if it was put up well, and I sent a written notification to Mr. Austin that the cane was not all put up well, and that if any of the cane were lost by his neglect to put it up well, that the loss would be his and not mine. After the cane was put up for seed I thought it was mine, and believed if it rotted or was stolen it would be my loss. I was to pay before it was removed, but believed if I did not pay that Austin & Adams would have the right to have the cane sold, and that I would be responsible for any diminution of price from what I had given. The clause about removal before payment was modified afterwards in the contract.

To the 6th cross-int. witness sayeth: I have not been upon the plantation of Austin & Adams since the cane was planted, and cannot say, from my own knowledge, how many acres it planted. Mr.

Austin told me some of the seed cane was rotten, and expected to plant 60 acres, perhaps less. Mr. Gay told me it had planted only about 50 acres; but if the cane had not rotted it would have planted much more, for it was when I bought it most excellent cane for seed, and think it ought to have planted, if sound, 70 or 80 acres. I believe Mr. Austin was late in planting it, so that some of it became spoiled. Mr. Austin told me he had the intention of making
40 the whole of the cane into sugar. This was said to me before my purchase, and in settling about the price of the seed cane he gave as a reason of his high price the value of sugar and molasses, and that he could make more by manufacturing it probably, but that he would be at much expense in fixing up his sugar house, which he said was in a very bad condition for grinding. I do not think the cane was too much for a good crop for the plantation of Austin & Adams if they could have got the hands to have cultivated it; but as they owed their factors for advances, and under the unsettled state of affairs at time of the sale about getting hands, it was perhaps as judicious to sell the cane; was much as they had still about 25 or 30 acres of stubbles.

To 7th cross-int. witness says: I know nothing more than I have stated in my answers to the int.-in-chief and cross-interrogatories.

(Signed) JAMES S. COLE.

Sworn to and subscribed before me, the undersigned justice of the peace in and for the parish of Iberville, this 22nd day of May, 1867.

(Signed) J. L. PETIT,
Justice of the Peace.

THE STATE OF LOUISIANA, *Parish of Iberville:*

I, Joseph Lucien Petit, the undersigned justice of the peace,
41 do hereby certify that I am a justice of the peace, duly sworn and commissioned in and for the 2nd ward, parish of Iberville, State aforesaid, that I have on this 22d day of May, A. D. 1867, caused Judge J. L. Cole to appear before me, at my office, in the town of Plaquemine, in the parish of Iberville; that I first swore him, according to law, true answer to make to the interrogotories-in-chief and cross-interrogatories annexed to this commission from the hon. the Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana, authorizing any justice in Iberville to take his testimony in the case pending in s'd Circuit Court, of Avendano Brothers *vs.* E. L. Gay *et al* ; that after the said Cole was sworn he gave the preceeding answers to the interrogatories-in-chief and cross-interrogatories, which were reduced to writing, exactly as given by said Cole, personally known to me, who signed the said answer to int. and cross-interrogatories in my presence.

I further certify that I have no seal of office, and after the said interrogatories-in-chief and cross-interrogatories were annexed by said Cole, I have closed the said examination, and enclose the said answers to the said hon. Circuit Court, to be used as evidence in s'd suit.

Witness my hand this 22d day of May, A, D. 1857, at my
42 office, in the town of Plaquemine, parish of Iberville.
[L. S.] J. L. PETIT,
Justice of the Peace.

Note of evidence.—Filed June 4, 1867.

AVENDANO HERMANOS
vs.
E. J. GAY *et al.* } 5,109.

Plaintiff offered in evidence document marked "A," documents B, C, D, E, testimony marked "A A;" also testimony marked F. Defendant offered documents G, H, I, K, L.

E. J. Gay sworn.—Plaintiffs evidence.—Document "A," filed evidence, June 4, 1867.

1. Be it known that on this 26th day of October, 1866, we have sold to Judge James L. Cole, of the parish of Iberville, in accordance with instructions from Messrs. Austin & Adams, of the same parish, all the sugar cane now standing upon their plantation, say
43 about thirty acres, more or less, for the price and sum of thirty-five hundred dollars, payable as follows: one thousand dollars cash, the receipt of which is hereby acknowledge, and twenty-five hundred on the first day of January, 1867, for which ammount the said Jas. S. Cole has executed his note, dated this day, and payable on the first day of January, 1867, bearing 8 per cent. per annum interest from date until paid, the receipt of which is also acknowledge.

2. It is provided that Messrs. Avendano Bro's subrogate to said Mr. Jas. S. Cole all their liens, rights, and privilege to and upon the said cause.

3. It is further provided that the cane, after being cut and winrowed, shall be at the sole risk of the said Jas. S. Cole.

4. It is further provided, that before the removal of said cane from the plantation of Messrs. Austin & Adams, the above-mentioned note of twenty-five hundred dollars shall be paid or secured to the satisfaction of the vendors.

5. It is also provided that in case of injury to the cane by frost, before the same is winrowed, this contract shall be considered null and void, and the considerations above mentioned shall be returned to the said Jas. S. Cole.

44 6. It is also provided that the title to said cane is guaranteed to the said Jas. L. Cole by the vendors, and by the said Austin & Adams. But it is distinctly understood that should third persons contest the title to said cane, so that the delivery cannot be effected, the said Jas. L. Cole shall not have any recourse for damages upon the vendors, or said Austin & Adams, but he will have the right to cancell this contract.

7. It is furthermore provided that the purchaser shall have the

right to leave the cane on the place of said Austin & Adams until he can have the same planted. The risk assumed by said Jas. L. Cole, as before mentioned, are ment to be such as loss by fire, theft, overflow, and such risks.

The vendors, Messrs. Avendano Bro's, hereby authorize the said Austin & Adams to permit the removal of such portion of said cane, for the purpose of planting, as they may deem propper, before the first of January next.

It is further stipulated that the said Jas. L. Cole shall have the privilege to pass across or through the plantation of said Austin & Adams, while removing said cane. Thus done and signed in the city of New Orleans, this 26th day of October, 1866.

(Signed) AVENDANO, H'NOS.

45 Approved:

(Signed JAMES L. COLE.

(Signed) AUSTIN & ADAMS.

Signed in presence of following witnesses:

C. MADUELL.

NEW ORLEANS, *Dec.* 31*st*, '66.

The cane mentioned in this agreement having been seized by Messrs. Edward J. Gay & Co., plaintiffs in the suit of Ed. J. Gay & Co. *vs.* Austin & Adams, 5th Judicial District Court, and Messrs. Avendano Bro's being therefore unable to make the delivery, as stipulated in this agreement, they have returned to me the one thousand dollars and the note for twenty-five hundred dollars, due on the 1st January, 1867; and therefore this contract of sale is cancelled, with full reservation on the part of said Messrs. Avendano Brothers for themselves, and as agents of [of] Austin & Adams, and on my own part of all rights of action against Messrs. Edward I. Gay Co., and the sheriff of the parish of Iberville.

JAS. L. COLE.
AVENDANO, H'NOS.

[U. S. inter, rev. stamps $3 50, affixed and cancelled.]

Signed in the presence of—

C. MADUELL.
L. M. AVENDANO.

Fifth Judicial District Court, parish of Iberville.

46 *Document "B."—Filed in evidence June* 4, 1867.

EDWARD I. GAY & Co.
vs.
AUSTIN & ADAMS. } No. 885.

The State of Louisiana and said court to JOHN W. AUSTIN, residing in the parish of Iberville, greeting:

Take notice, that on the 3rd day of December, A. D. 1866, an

order of seizure and sale was granted in this case against the following-described and mortgaged property, to wit:

A certain tract of land or plantation, established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the river Mississippi, four miles below the town of Plaquemine, measuring six arpents and five-eighths of an arpent in front by a dept. of forty arpents between paralell lines of the first concession. with all the alluvial deposits or bature already formed or to be formed in front of said plantation. and a second depth or concession of forty arpents in depth, and equal in superficial to the front concession, so that
47 said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and H. E. Moore, and below by lands of Dr. Charles Clament, and in the rear by land of Onesine Landry & Co., and others, together with all the buildings and improvements therein, to pay and satisfy the sum of one thousand four hundred and sixty-seven dollars and six cents, with eight per cent. per annum interest thereon from the 20th May, 1862, till paid, together with four dollars and fifty cents cost of copies, and the cost of this suit, including revenue stamps, fifty cents.

Now, therefore, you are hereby notified that if, within three days from service hereof on you, adding one day for every twenty miles between your residence and that of the judge of this court, the above-mentioned sum, cost of copies, and costs of these proceedings are not fully paid and satisfied, a writ of seizure and sale will then issue to the sheriff of Ibervill parish against the above-described and mortgaged property to satisfy this demand.

Witness the Hon. R. T. Posey, judge of said court, this 4th day of December, A. D. 1866.

[SEAL.] ALEX. HEBERT, *D'y Cl'k.*

48 [Document "C" will be found at page 115]

State of Louisiana, parish of Iberville, Fifth Jud'c Dist. Court.

Document "D."—John W. Austin appointed keeper.—Filed in evidence June 4, 1867.

EDWARD I. GAY & CO.
vs.
AUSTIN ADAMS. } No. 885.

To JOHN W. AUSTEN:

You are hereby appointed keeper of the property seized in the above case, viz, the plantation of Austin & Adams, and the following moveables thereto attached: 10 mules, one under seizure for taxes; 3 cane carts, 1 bagasse cart, 6 old plows, 2 harrows, 1 fluke, 6 old hoes, 7 axes, 6 spades; lot of old gearing, and about 30 acres of cane, cut down and in winrow, said to belong to, and claimed by

Judge James L. Cole, of this parish of Iberville, with authority to care for the same until further orders.

Parish of Iberville. Dec. 17th, 1866.

(Signed) J. G. GRACE,
D'y Sheriff.

[Document "E" is transcribed at page 11.]

49 U. S. Circuit Court.

Testimony "A A."—Filed in evidence June 4, 1867.

AVENDANO, BRO'S
vs.
E. I. GAY.

Jno. W. Austin, witness for the pl'ff, sworn, says: I was and am one of the firm of Austin & Adams, engaged in planting in parish of Iberville. Avendano, Bro. were our merchants during the year 1866; they made advances to Austin & Adams, and furnished supplies for the plantation. The supplies consisted of provisions, money, utensils, &c. The amount we were owing them at the time we sold the cane was something over $3,000. On that plantation we raised sugar-cane and some cotton; about 30 acres of sugar-cane; I placed the 30 acres of sugar-cane in the hands of Avendano Bro. to be sold by them. The signature of Austin & Adams to the document "A" is genuine, and was signed by me. Documents B, C, D, were served on me by the sheriff of the parish of Iberville, after the 26 Oct. 1866.

Before Mr. Gay made the seizure of the 30 acres of cane I stated to him the cane was sold; that I don't recollect the exact languge that was used; I recollect stating that the cane was sold to

50 Judge Cole.

The 30 acres of cane seized by Mr. Gay are the same raised with the advances and supplies furnished by Avendano Bro's.

The two signatures of James L. Cole attached to document "A" are genuine.

The original, and the duplicate original, which is now marked "E," were sent to me by Avendano Bro's to be served on Mr. Gay; I showed one of them to Mr. Gay on or about the 18th December, 1866.

When the cane was seized by Mr. Gay it had already been separated from the soil by being cut and put in windrow.

X-examined.

By Race Foster & E. T. Merrick, att'ys:

If the pl'ffs succeed in making any money out of the deff. in this suit it will be placed to the credit of Austin & Adams. These thirty acres of cane are not more than sufficient for planting the place the

present year. They would plant from 90 to 100 acres. There are about 350 acres subject to cultivation. Avendano Bro's furnished the supplies for the year 1865, and Austin & Adams were indebted to them some on that account; can't state what am't of money Avendano Bro's furnished A. & A. apart from the supplies during 1866.

51 Document E was exhibited to Mr. Gay before it was handed to the sh'ff to be served on him; I don't know whether Mr. Gay read the document. All the crop raised was not sent to Avendano Bro's.

To int. 1, to wit: Some potatoes and two bales of cotton. A. & A. cut and sold about one hundred and fifty dollars worth of wood, the proceeds used by A. & Adams, and Avendano Bro. knew nothing of it.

My authority to Avendano Bro. to sell the cane to Judge Cole was in writing. I never made any written conveyance of the said cane to Avendano Bro. except as in document "A." The cane was sold by A. Bro's as our factors. I had Mrs. Adams consent to sell the cane.

The sale of the seed cane would have prevented the planting of cane on the plantation. I expected to abandon the place at the time I made the sale.

The cane was standing at the date of the sale to Cole, (document A.)

At the time of the seizure the cane was in windrow and covered over with earth, to be used as seed cane.

(Signed) JNO. W. AUSTIN.

Taken by cosent, July 29th, 1867.

(Signed) G. S. BRIGHT, *For Pl'ffs.*

52 Jurat waived.

Race, Foster & E. T. Merrick waive all formalities of taking; but reserve all to the legal objections.

(Signed) RACE, FOSTER & E. T. MERRICK,
Of Counsel for Def.

Fifth judicial Dist. Court.

Testimony "F," transcribed at page 28.—Defendant's evidence.—Document "G."—"Deed."

EDWARD I. GAY & CO.
vs.
AUSTIN & ADAMS. } No. 885.

STATE OF LOUISIANA, *Parish of Iberville*:

Be it remembered that by virtue of a writ of seizure and sale to the sheriff of the parish of Ibervill, direceted from the honorable the court aforesaid, in the above entitled and numbered cause, I, Allen

Jumel, sheriff in and for the parish of Iberville, duly commissioned and sworn, did seize on the twenty-fifth day of December, of the year of our Lord one thousand eight hundred and sixty-six,
53 and on the twenty-ninth (29th) day of said month of the same year did proceed to advertise all the right, title, interest and claim of Jno. W. Austin and Eliza S. Adams, defendants in the above suit in and to the property hereinafter fully and minutely described, for sale for cash with benefit of appraisment, by posting up at the door of the court-house of this parish, and by publishing in the "Iberville South," a newspaper published weekly at Plaquemine, in said parish of Iberville, public notices in both the English and French languages; and said notices containing a full description of said property hereinafter described, and specifying the time, place, and conditions of said sale were by me the said sheriff continued until Saturday, the 2nd day of February, A. D. 1867, when I, said sheriff, did repair to the court-house of said parish of Iberville, the place designated for making said sale, to offer said property for sale, for cash, as aforesaid, according to the tenor of said notices; and before offering said property for sale, did read aloud, distinctly and audibly, in both the English and French languages, said public notices, and also a certificate from the recorder of mortgages
54 of said parish of Iberville, bearing date the first day of February, A. D. 1867, by which it appears that said property is subject to the following mortgages, to wit:

1° One legal mortgage in favor of the minor children of Wm. C. Adams, deceased, resulting from the appointment of W'o W. C. Adams, as tutrix of her children, as per certificate of the clerk of the 6th District Court, for the sum of $83,158, as per record of mortgages, book No. 5, entry 214. May 14th, 1856.

2° One special mortgage in favor of the minors Martha Emma Adams, and Ann Eliza Adams, as follows, to wit: 1° In favor of Martha Emma Adams for the sum of eight thousand nine hundred and ninety-eight, 26⅓-100 dollars, being the amount in principal and interest coming to her in the succession of her deceased father, Wm. C. Adams, up to the 14th June, 1861, with interest at 8 per cent per annum thereafter until paid, which mortgage bears on the 19-160 parts of the land above (hereinafter) described, the share of said minors. 2° In favor of Ann Eliza Adams for the sum of twelve thousand nine hundred and ninety-seven 60⅓-100 dollars being the amount in principal and interest coming to her in the succes-
55 sion of her deceased father, Wm. C. Adams, up to the 14th June, 1866, with interest thereafter until paid, which mortgage bears on the 19-160 parts of the land above (hereinafter) described, the share of said minor, as per book of mortgages No. 7, entry No. 40, July 11th, 1859.

3°. One special mortgage, in favor of Edward J. Gay & Co., for the sum of one thousand four hundred and sixty-seven 06-100 dollars, with interest, as specified in the act of mortgage, as per record of mortgages, book No. 8, entry No. 67, April 9th, 1861.

4°. Another special mortgage, in favor of Odillo Labame, for

the sum of thirteen thousand and eight hundred dollars, represented by the following notes, bearing interest at the rate of eight per cent. per annum after [after] their respective maturity until paid, viz:

One note due	20th	May,	1864, for	$5,200
One "	"	"	for	4,400
One "	"	"	for	4,200
Equal amount to mortgage debt				$13,800

as per record of mortgage book 8, entry No. 168, May 20th, 1862.

5th. Another special mortgage,, in favor of Christopher Adams, jr., for the sum of twenty-eight thousand one hundred and sixty
56 dollars, represented by the following notes, to wit:

One note due	1st	April,	1850, for	$1,760
Cne "	"		1851, for	7,260
One "	"		1852, for	6,820
One "	"		1853, for	6,380
One "	"		1854, for	5,940
Equal amount to mortgage debt				$28,160

All said notes bearing interest at eight per cent. per annum, after their respective maturity, until paid, as per act of mortgages re-inscribed in book of mortgages No. 8, entry No. 332, May 18th, 1866.

6°. One judicial mortgage, in favor of Herbert & Mayot, for the sum of two hundred and ninety-three 64-100 dollars, with legal interest thereon from the 4th day of March, 1862, and costs of suit, as per book of mortgages, judicial No. 4, entry No. 179, May 11th, 1866.

7°. Another judicial mortgage, in favor of J. McWilliams & Co., for the sum of two thousand and forty-one 56-100 dollars, with interest at eight per cent. per annum from 1st March, 1860, and costs of suit, as per book of mortgages, judicial No. 4, entry 240, May 14th, 1866.

8°. Another judicial mortgage, in favor of J. McWilliams & Co., for the sum of eight hundred and twenty-three 31-100 dollars, with
8 per cent. per annum from 1st March, 1860, and costs of
57 suit, as per book of judicial mortgages No. 4, entry No. 241, May 14th, 1866.

9°. Another judicial mortgage, in favor of J. McWilliams & Co., for the sum of one thousand one hundred and fifteen 02-100 dollars, with 8 per cent. per annum from 1st March, 1860, and costs of suit to be taxed, as per book of judicial mortgage No. 4, entry 246, 14 May, 1866.

10°. Another judicial mortgage, in favor of Samuel Warden, for the sum of one thousand and sixty-eight 33-100 dollars, with interest at 8 per annum, on $58 50, from 21st March, 1862, on the sum of $50 from the 15th July, 1862, at same rate on the sum of six hun-

dred and sixty-five 45-100 dollars from 17th April, 1861, and like interest on the sum of $294 38 from June, 1862, and costs of suit to be taxed as per book of judicial mortgages No. 4, entry 262, May 14th, 1866, recorded against John W. Austin.

11th. Another judicial mortgage, in favor of William Bowman, for the sum of one thousand dollars, with interest at 8 per cent. per annum from 1st March, 1860, and costs of suit, as per book of judicial mortgages No. 4, entry No. 276, May 14th, 1866, recorded against John W. Austin.

12th. Another judicial mortgage, in favor of E. Reilly &
58 Co., for the sum of two hundred and nine 69-100 dollars, with interest at the legal rates from the 4th day of Janury, 1862, and costs of suit, as per book of judicial mortgages No. 4, entry No. 281, May 14th, 1866, recorded against John W. Austin.

13th. Another judicial mortgage, in favor of E. Reilly & Co., for the sum of four hundred and forty-one 40-100 dollars, with legal interest from the fourth day of January, 1862, and costs of suit, as per book of judicial mortgages No. 4, entry 282, May 14th, 1866, recorded against W'dow Wm. C. Adams.

14th. Another judicial mortgage, in favor of Ann Eliza Adams, for the following sums, viz: 1°. For the sum of seven thousand nine hundred and seventy-three 22-100 dollars, with interest at 5 per cent. per annum from 12th Jan., 1867, with a legal or tacit mortgage in favor of plaintiff on all the property of defendant to date from the day of her appointment as tutrix, to wit, the 6th day of October, 1854. 2°. For the further sum of eight thousand three hundred and thirty-one 82½-100 dollars, amount of the note of defendant, dated June 14th, 1859, payable seven years after date, bearing interest at 8 per cent. per annum, after maturity, as per book of judicial mortgages No. 4, entry 451, Jan. 15th, 1867, recorded against
59 Wdo. Wm. C. Adams. And then set up and offered for sale the following described property, to wit: A certain tract of land or plantation established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the Mississippi, four miles below the town of Plaquemine, measuring six arpents and five-eights of an arpent in front by a depth of forty arpents between parallel lines of the first concession, with all the alluvial deposits or batture formed, or to be formed, in front of said plantation, and a second depth or concession of forty arpents in depth, and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and H. E. Moore, and below by lands of Dr. Chas. Clement, and in the rear by land of Onezime, Landry & Co., and others, together with all the buildings and improvements thereon, and the following moveables thereto attached: 9 mules; 3 cane carts; 1 bagasse cart; 6 old plows; 2 harrows; 1 fluke; 6 old hoes; 7 axes; 6 spades; lot of old gearing, and about thirty acres of cane cut down and in winrow, said to belong and claimed by Judge J. L. Cole, of this parish, in the man-
60 ner following, as directed by order of Hon. R. T. Posey, judge

of said fifth judicial District Court, a copy of which order is annexed to the return of the writ whereunder these proceedings were had, to wit: 1°. Offered the whole of said property, and no one bid. 2°. Offered the $\frac{38}{160}$ parts undivided of the same, and no one bid therefor; and 3°. Then offered the $\frac{122}{160}$ parts of said property undivided, and the same, after having been duly cried, was finally adjudicated and sold to Edward J. Gay, one of the plaintiffs herein, of the parish of Iberville, State of Louisiana, the highest and last bidder therefor, for the sum of ten thousand one hundred and three 14-100 dollars, ($10,103 14-100) that being amount of the appraised value of said property, made by duly qualified appraisers, as may be seen by reference to the process verbal of appraisement annexed to and returned with the writ under which these proceedings were had.

And said price of purchase, $10,103 14-100, was thus appropriated; the sum of $195 35 to payment of clerks, sheriffs, and printers, costs and revenue stamps of these proceedings; and the balance, say $9,907 79-100, said purchaser has retained, less $169 57-100 taxes, State and parish, due on said property, and
61 $574 77-100 to pay freedmen, per order attached to the writ aforesaid, to the payment of the mortgage due the minors, Ann Eliza Adams, and the balance over to the credit of the writ under which said property was sold.

Wherefore, in consideration of the premises, and by virtue of the law in such cases made and provided, I, Allen Jumel, sheriff aforesaid, do by these presents, sell, assign, transfer, convey, and deliver unto said purchasers, Edward J. Gay, all the right, title, interest, and claim of said defendants, John W. Austin and Eliza S. Irby, Wod. Wm. C. Adams, in and to said property or any part thereof, to have and to hold the same to said purchaser, his heirs and assigns forever.

In testimony whereof, I hereto set my hand officially, at the parish of Iberville, with R. Alfred Walters and Adolphe Dupuy, competent witnesses, who also sign these presents, this fourth day of February, A. D. 1867

(Signed) ALLEN JUMEL, *Sheriff.*
(Signed) R. A. WALTERS.
(Signed) A. DUPUY.

[$10 50 int. rev. stamps affixed and cancelled.]

Duly recorded in my office, in book of conveyances, No. 8, entry 353, under date of 9th Feb. 1867.

Witness my hand and seal of office this 14th February, 1867.

(Signed) AUTIN HIRSCH, *Recorder.*

62 CLERK'S OFFICE, 5TH JUD'L DIS'T COURT,
Parish of Iberville, State of Louisiana.

I, the undersigned, do hereby certify that the within and foregoing sheriff's deed has been this day duly recorded in my office, in the sheriff's deed book G, page 312, 313, 314, 315, 316.

In faith whereof, witness my hand officially and the seal of said court this 19th day of February, A. D. 1867.

(The revenue stamps required by law are hereto affixed.)

[SEAL.] (Signed) E. A. MARIANNEAUX, *Clerk*.

Document "H."

PARISH OF IBERVILLE, 7 *Feb'y*, 1867.

To EDWARD I. GAY.

DEAR SIR: Being unable to work or carry on any portion of the plantation, heretofore belonging to us in this parish, and of which you have lately purchased the undivided 122-160th parts at sheriff sale, we do hereby authorize you to use and occupy any portion of said plantation which you desire to cultivate for your own
63 account, and we ratify the sale made to you by the sheriff, and your possession of the same under his order.

We hereby sell and convey unto you an interest in any seed cane which may appertain to the 38-160th part of said plantation still owned by us, with the condition that you will pay the proportion of the lien upon our said portion of said seed cane for wages due the freedmen for labor last year, and that you will apply any balance which it may be worth to the payment of our debt due you, so far as the same may not be paid you out of the sale of the above described 122-160—say one hundred twenty-two one hundred and sixtieth parts of said plantation by the sheriff.

(Signed) AUSTIN & ADAMS.

Accepted—

EDWARD J. GAY.

It is mutually agreed that the value of seed to be charged said Gay, under above agreement shall be fixed at twenty-five dollars per acre, for 38-160 of the whole land, which said seed cane may plant this year.

(Signed) AUSTIN & ADAMS.
(Signed) EDWARD J. GAY.

64 Rec'd, parish of Iberville, 12th Feb'y, 1867, of Edward J. Gay, one hundred seventy-nine 03-100 dollars, to pay over to Capt. Osburn, assistant agent of the Freedmen's Bureau for this parish, to settle with the laborers for their lien on the crop of 1866, as per his order of 8 Feb'y, circular No. 18.

(Signed) AUSTIN & ADAMS.

State of Louisiana, parish of Iberville, fifth jud'l Dis't Court.

Petition.—Document "I."—Transcript of suit.

EDWARD J. GAY & CO.
vs.
AUSTIN & ADAMS. } No. 885.

To the hon. judge of the fifth judicial Dis't Court of Louisiana, in and for the parish of Iberville:

The petition of Edward J. Gay, residing in said parish; of William

Edwards, residing in the city of New Orleans, and of William T. Gay, residing in the city of St. Louis, Missouri, all composing the late commercial firm of Edward J. Gay & Co., domiciled in the said city of St. Louis, respectfully represents, that John W. Austin, and Mrs. Eliza S. Adams, widow of William Clark Adams, both residing in the said parish of Iberville, are justly indebted in solido, unto
65 your petitioners, in the sum of fourteen hundred and sixty-seven 06-100 dollars, with eight per cent. per annum interest thereon from the 20th May, 1862, till paid, for this, to wit:

On the ninth day of April, 1861, the said Austin & Adams were planting partners in said parish, and your petitoners, in order to aid them in their said business, had accepted and endorsed for them, and made cash advances to them, and the said Austin & Adams, in order to secure your petitioners against loss, on account of said acceptances, endorsements, and advances, did each specially mortgage and hypothecate in solido (to the extent of the sum of twenty thousand dollars) in favor of your petitioners, one undivided half of the following described property, to wit:

A certain tract of land or plantation, established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the river Mississippi, four miles below the town of Plaquemine, measuring six arpents and five-eight of an arpent in front, by a depth of forty arpents, between parallel lines of the first concession, with all the alluvial deposits or batture already formed, or to be formed in front of said plantation, and a second depth
66 or concession of forty arpents in depth, and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and H. E. Moore, and below by land of Dr. Charles Clement, and in the rear by land of Onezine, Landry & Co. and others, together with all the buildings and improvements thereon; and also mortgaged a number of slaves, and bound themselves not to sell, aleinate or encumber the said property to the prejudice of petitioners' said mortgage, all of which will more fully appear from a duly certified copy of a said mortgage passed before Adonis Petit, then recorder, in and for the parish of Iberville, on the 9th day of April, 1861, hereto annexed, and made a part of this petition.

Petitioner further represets, that on the 20th day of May, 1862, they made and had a settlement of accounts with said Austin & Adams, and they, by and in an authentic act, dated of said last date, confessed and acknowledged themselves indebted to your petitioners at that date, in the sum of one thousand four hundred and sixty-seven dollars and six cents, and the said mortgage for twenty thousand dollars was reduced and cancelled, except for the said mentioned sum of one thousand four hundred and sixty-seven dollars and
67 six cents, all of which will more fully appear from a duly certified copy of said authentic act, dated 20th May, 1862, passed before Louis Petit, deputy recorder for the parish of Iberville, hereto annexed, and made a part of this petition.

Petitioners allege that the acts hereto annexed, as before stated,

are authentic and import a confession of judgment in their favor for the sum of one thousand four hundred sixty-seven dollars and six cents, with eight per cent. per annum interest thereon from the 20th May, 1862, till paid.

Wherefore they pray this hon. court for an order commanding the sheriff of Iberville Parish to seize and sell, according to law, for cash, the property mortgaged and described in the annexed authentic act, the slaves excepted, to pay your petitioners one thousand four hundred and sixty-seven dollars and six cents, with eight per. annum interest thereon from the 20th May, 1862 till pay, together with four dollars and fifty cents, costs of copies and the costs of this suit, including the revenue stamps affixed thereto.

And they, for general releif, will ever pray.

(Signed) SAMUEL MATTHEWS,
Att'y for Petitioners.

Let an order of seizure and sale issue as prayed for in the foregoing petition.

68 December 3rd, 1866.

(Signed) R. T. POSEY,
Judge 5th Jud. District.

Filed Dec. 4th, 1866.

(Signed) ALEX. HEBERT, *D'y Clerk.*

Copy of mortgage of Austin & Adams to E. J. Gay & Co.

STATE OF LOUISIANA, *Parish of Iberville*:

Before me, Adonis Petit, recorder in and for the parish of Iberville, duly commissioned and sworn, and ex-officio notary public in and for said parish, and residing therein, personally came and appeared John W. Austin and Mrs. Eliza Z. Kirby, widow of William Clark Adams, planting partners known under the name and style of Austin & Adams, residing in said parish, who declare that whereas the firm of Edward J. Gay & Co., of the city of St. Louis, Missouri, composed of Edward J. Gay, a resident of this parish and State, and William T. Gay, and William Edwards, residents of said city of St. Louis, Missouri, have accepted drafts drawn by said appearers on the said firm, and have also endorsed for said appearers; and whereas said firm have also made cash advances for supplies for the use and benefit of said appearers; and whereas the said firm of

69 Edward J. Gay & Co. may also hereafter make cash advances to said appearers; and accept the drafts, and endorse for the said appearers, with the understanding that the total amount of their indebtedness to the said firm of Edward J. Gay & Co. shall never exceed at any one time the sum of twenty thousand dollars to be evidenced by the account current of such advances, acceptances and endorsements made, or which may be made, to be kept by said firm, and all such advances to bear interest at eight per cent per annum until re-imbursed.

Now, therefore, in order to hold harmless and secure the said firm of Edward J. Gay & Co. for all acceptances, endorsements, and advances already made for them, and also to secure and hold harmless for any and all such acceptances, endorsements, and advances which said firm may hereafter make for their use and benefit, they, the said appearers declared that they do by these presents specially mortgage, affect and hypothecate in solido, to the extent of the said sum of twenty thousand dollars in favor of Edward J. Gay, William T. Gay & William Edwards, the said firm being represented by Edward J. Gay, one of said firm, here present, and accepting this mort-
70 gage in the name of, and for the use and benefit of his said firm, the following described landed property and slaves, each appearer for one individed half, to wit: A certain tract of land or plantation, established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the river Mississippi, four miles below the town of Plaquemine, measuring six arpents and five eights of an arpent in front, by a depth of forty arpents between parallel lines of the concession, with all the alluvial deposit or batture already formed or to be formed in front of said plantation; and a second depth or concession of forty arpents in depth, and equal in superficies to the front concession so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and F. E. Moore, and below by land of Dr. Charles Clement, and in the rear by land of Onesine, Landry & Co., and others together, with all the buildings and improvements thereon; 2° of the following named and described slaves: Phillis, aged thirty-seven years, and her two children, Maria, 8 years, Sam, 4 years; Jefferson, 20 years; George, 14 years; Oliver, 38 years; Jane, 27 years, Johua, 37 years; Kitty, 25 years; Preston, 6 years; Minna, 6 years; Lucinda, 5 years; Ishum, 4 months, Billy
71 Wood, 45 years; Sibly, 40 years; Moses, 21 years; Nelson, 16 years; Jenny, 17 years, and her child Joseph, 3 years; Lucy, 19 years; John, 27 years; William, 24 years; Ben, 46 years; Priscilla, 38 years; Job, 26 years; Jerry, 50 years; Ambrose, 40 years; Edmond, 46 years; Sam, 22 years; Levy, 30 years; Sam, 38 years; Deb, 45 years; Amanda, 27 years, and her three children, Dan, 6 years, Mary, 3 years, Sam, an infant; Hannah, 12 years, and Ely, 12 years, and all the future increase of said slaves.

They, the said appearers, promising and binding themselves not to sell, alienate, or encumber the said property to the prejudice of this mortgage; and the said appearers moreover bind themselves to consign and ship to the said firm of Edward J. Gay & Co., at St. Louis, for sale, all the crops of sugar and molasses made on the said plantation, until the full and final settlement of said indebtedness, as hereinafter stated, and on all sales made by said firm, they shall be entitled to the usnal merchantile commission and charges. And here, the parties to this act declared that they dispense with the production of the certificate from the recorder of mortgages from this parish, as prescribed by article 3,328 of the civil code Louisiana, and thereby exonerate me, recorder, from any and all damages and responsi-

72 bilities which might result in consequence of the non-production of said certificate.

And thereupon personally came and appeared, and intervened to this act Mistress Sarah Adams, of lawful age, and wife of the said John W. Austin, who being duly authorized and assisted by her said husband, took cognizance of the foregoing act of mortgage, which I, recorder, carefully read and explained to her, and having so done, she declared that it was her intention not only to ratify said mortgage, but to make renunciation of all rights she has, by mortgage or otherwise, on the property herein mortgaged, upon which I, recorder, declared to her, separately and apart from her said husband and out of his presence, as it is my duty, and before receiving her signature, that by the laws of this State, she, the said Mrs. Austin, possessed a general mortgage on all the property of her said husband, and upon that of the community in case she should renounce thereto, first for the restitution of her dower, and re-investement of dotal property brought by her im marriage.

2d. For the restitution of dotal property by her acquired during marriage, by inheritance, donation or otherwise.

Third. For indemnity against all debts contracted, or which
73 she may hereafter contract with her said husband.

4°. For such of her paraphernal property and funds as may have been alienated by her said husband, or of which he had or may have the administration or enjoyment, or of which he may otherwise have benefited.

5°. For nuptial presents made to her by her said husband or others, and finally, that by an act af the legislature of the State of Louisiana authorizing married women, aged more than twenty-one years, to make valid renunciations, approved March, 27th, 1835, she is authorized to renounce all the rights, privileges, and mortgages she has, or may, or might have, in and to the property herein mortgaged; but that, in making her intended renunciations, she would deprive herself, irrevocably and forever of all rights of reclamation against said property herein mortgaged, whether under mortgage privilege or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said mortgage, and to dispossees herself of all rights and lien which she has upon said property, whether by marriage, contract, dower, donation, or otherwise. And the said husband, being now again present before me, and authorizing his said wife, she again declared that she does for-
74 mally renounce, henceforth and forever, all and singular her said rights, and transfer the same to the said mortgages, their heirs and assigns, to be had and held by them and them, and by them enjoyed in law and thereout; and she hereby binds herself and her heirs to the said mortgagees, their heirs and assigns, that she shall and will, at all times, acknowledge the validity of the present act of mortgage, and of the renunciation she now makes of all rights which she has or may have in and to the property thus mortgaged by her husband; and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all

laws, privileges and customs of which she might avail herself, or which are in her favor in the premises.

Thus done and passed in my office, at the said parish of Iberville, this ninth day of April, eighteen hundred and sixty-one, in the presence of Messrs. Celestine A. Roth and Benjamin Deblieux, competent witnesses, who have signed these presents with the parties and me, recorder, after due reading hereof, fourteen words erased, null, approved before signing:

(Signed) JNO. W. AUSTIN.
SARAH ADAM AUSTIN.
E. S. ADAMS.
EDWARD J. GAY.
C. A. ROTH.
BENJAMIN DEBLIEUX.

ADONIS PETIT, *Recorder.*

75 A true copy of original on file and of record in my office, in record of mortgages, book No. 8, entry No. 67, inscribed April 9th, 1861.

Witness my hand and seal of office, this 28th November, 1866.

(Signed) AUSTIN HUNT, *Recorder.*

Filed, Dec. 4th, 1866.

(Signed) ALEX. HEBERT, *D'y Clerk.*

Copy of act of partial release of mortgage of Edward J. Gay to Austin & Adams.

STATE OF LOUISIANA, *Parish of Iberville:*

Before me, Louis Petit, deputy recorder, duly appointed and sworn in and for the parish of Iberville, personally came and appeared Mr. Edward J. Gourrier, residing in said parish, of the late firm of Edward J. Gay & Co., of the city of St. Louis; also appeared John W. Austin and Mrs. Eliza S. Irby, widow of William Clark Adams, planting partners, known under the name of Austin & Adams, of said parish; all which appears declared, (the said Edward J. Gay acting for his firm,) that whereas, by act passed before the recorder of
76 this parish, on the ninth day of April, in the year eighteen hundred and sixty-one, and duly recorded in mortgage-book No. 8, the said appearers, John W. Austin and Mrs. Eliza S. Irby, widow, Adams consented and gave a mortgage to the said Edward J. Gay & Co., to the sum of twenty thousand dollars, for acceptances and indorsements and advances made or to be made; said mortgage being given on the sugar plantation and slaves of the mortgagers, particularly described in said act of mortgage. Now the said parties and appearers declared and said that they had a settlement in full, and that there remains due on this day by said John W. Austin and widow Adams to said Edward J. Gay & Co., a balance of fourteen hundred and sixty-seven dollars and six cents; therefore, the said

appearers, and in particular the said Edward J. Gay, as partners aforesaid, did declare that said mortgage of twenty thousand dollars consented in faver of said Edward J. Gay & Co. by said Austin & Adams, is now diminished, reduced, and restricted to said balance of fourteen hundred and sixty-seven dollars and six cents, and is cancelled for all sums over and above said balance, and the recorder is hereby authorized to make entries accordingly on his mortgage-book of said cancellment.

Thus done and passed in my office, in the parish of Ibervill,
77 this twentieth day of May, in the year or our Lord one thousand eight hundred and sixty-two, in the presence of Messrs. Achille Landry and Zenon Labuve, competent witnesses, who have singed these presents with the parties, and we, the said deputy recorder, after due reading, hereof.

(Signed) EDWARD J. GAY.
JOHN W. AUSTIN.
E. S. ADAMS.
ZENON LABOUVE.
ACHILLE LANDRY.
L. PETIT, *Deputy Recorder.*

A true copy of original on file and of record in my office, in record of miscellaneous act, book No. 2, entry No. 613, inscribed May 20th, 1862.

Witness my hand and seal of office, this 28th November, A. D. 1866.

(Signed) AUSTIN HUNT, *Recorder.*

Filed, Dec. 4th, 1866.

(Signed) ALEX. HERBERT, *D'y Clerk.*

Fifth Judicial Dist. Court, parish of Iberville.

Original notice of seizure and sale.

EDWARD J. GAY & Co. *vs.* AUSTIN & ADAMS. } No. 885.

The State of Louisiana and said court to JOHN W. AUSTIN and Mrs. ELIZA S. ADAMS, widow of William Clark Adams, residing
78 in the parish of Iberville, greeting:

Take notice, that on the 3d day of December, A. D. 1866, an order of seizure and sale was granted in this case against the following described and mortgaged property, to wit:

"A certain tract of land or plantation, established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the river Mississippi, four miles below the town of Paquemine, measuring six arpents and five-eights of an arpent in front,

by a depth of forty arpents between parallel lines of the first concession, with all the alluvial deposit or batture already formed or to be formed in front of said plantation, and a second depth or concession of forty arpents in depth and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and H. E. Moore,, and below by lands of Dr. Chas. Clement, and in the rear by land of Onesime Landry & Co. and others, together with all the buildings and improvements thereon," to pay and satisfy the sum of one thousand four hundred and sixty-
79 seven dollars and six cents, with eight per cent. per annum interest thereon, from the 20th May, 1862 till paid, together with four dollars and fifty cents costs of copies and the costs of this suit, including revenue stamps, fifty cents.

Now, therefore, you are hereby notified that if within three days from service hereof, on you adding one day for every twenty miles between your residence and that of the judge of this court, the above-mentioned sum, interest, costs of copies, and costs of these proceedings are not fully paid and satisfied, a writ of seizure and sale will then issue to the sheriff of Iberville parish against the above-described and mortgaged property to satisfy this demand.

Witness the Hon. R. T. Posey, judge of said court, this 4th day day of December, A. D. 1866.

(Signed) ALEX. HEBERT, *D'y Clerk.*

Rec'd Dec. 4th, A. D. 1866, and on the 5th day of same month and year served a true copy hereof on Jno. W. Austin and Mrs. Eliza S. Adams, in person, at the parish of Iberville.

(Signed) F. E. GRACE, *D'y Sheriff.*

Ret. and filed Dec. 6, '66.

(Signed) ALEX. HEBERT, *D'y Clerk.*

80 Fifth Judicial District Court, parish of Iberville.

Writ of seizure and sale.

EDWARD J. GAY & Co. *vs.* AUSTIN & ADAMS. } No. 885.

The State of Louisiana and said court to ALLEN JUMEL, sheriff of the parish of Iberville, greeting:

We command you, that by the seizure and sale of the following described and mortgaged property, to-wit:

"A certain tract of land or plantation established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the river Mississippi, four miles below the town of Plaquemine, measuring six arpents and five-eights of an arpent in front, by a depth of forty arpents between parallel lines of the first

concession, with all the alluvial deposit or batture already formed or to be formed in front of said plantation, and a second depth or concession of forty arpents in depth, and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and H. E. Moore, and below by land of Dr. Chas. Clement, and in the rear by lands of Onezime Landry & Co.,
81 and others, together with all the buildings and improvements thereon, to pay and satisfy the sum of one thousand four hundred and sixty-seven dollars and six cents, with eight per cent. per annum interest thereon, from the 20th May, 1862, till paid; seventeen 25-100 dollars costs, as well as your own costs and charges for cash; and how you shall have executed this writ, make return to our said court in seventy days as the law directs.

Witness the Hon. R. T. Posey, judge of said court this 11th day of December, A. D. 1866.

(Signed) ALEX. HEBERT, *D'y Clerk.*

Sheriff's return.

Rec'd Dec'r 11th A. D. 1866, and executed on the 12th day of same month and year (December, 1866,) by seizing the within described plantation with the moveables thereto belonging, described in the inventory hereto annexed as part hereof, and on the 29th day of same month of December, A. D. 1867, proceeded to advertise said property for sale, by posting up at the door of the court-house, of said parish of Iberville, and by publishing in the "Ibervill South," a newspaper, issued weekly at Plaquemine, in said parish, public notices in both the English and French languages, giving a
82 correct description of said property, setting forth time, place, terms, and conditions of the sale of the same; and said notices were by me, undersigned sheriff, continued until Saturday the 2nd day of February, 1867, when I, said sheriff, did repair to the court-house of said parish, the place designated for making said sale, and proceeded to offer said property for sale for cash, with benefit of appraisment, reading first the said public notices distinctly and audibly in both the French and English language, and a certificate from the recorder of mortgages of this parish, dated the 1st of Febuary, 1867, showing the mortgages effecting said property and hereto annexed for reference; and also, read protest of Lubin Bernard, hereto annexed, and also order of Capt. F. A. Osbourn, agent of the Freedmen's Bureau at this point, directing the detention, in my hands of $753 80-100, amount due freedmen by the defendants herein, for labor in the production of sugar cane on said plantation. See account of order hereto annexed. Then set up and offered said property for sale in block as directed by the order of Hon. R. T. Posey, judge of our said court, now on file in our said fifth judicial District Court in this cause, and no one offering the amount of the appraisement of same, no adjudication was made; then set up
83 the 38-160 parts undivided of said property, and the same having also been duly cried, was not sold, no one bidding

therefore; then set and offered the 122-160 parts undivided of said property, and same on being duly cried, was finally adjudicated and sold to Ed. J. Gay, for the sum and price of ten thousand one hundred and three 14-100, ($10,103 14-100,) that being the price of appraisment of said property, as may be seen by reference to the annexed process verbal of appraisement of said property, made by duly qualified appraisers, and said price of purchase say the sum of $10,103 14-100 was then appropriated.

To the payment of bal'ce States taxes for 1865	$28 27
" " parish taxes for 1865	54 90
" " State taxes for 1866	57 00
" " parish taxes for 1866	29 40
" " clerks, sheriff, sheriff's keeper, recorder and printer's costs	195 35
To the payment of the 122-160 part of Capt. Osborn's order for freedmen, of $783 70	574 77
And the balance of said price of purchase	9,163 45
	$10,103 14

Said purchaser has retained in his hands to pay and satisfy, 1st. The amount of the special mortgage and interest due the minor, Ann Eliza Adams, amounting to date per certificate of mortgage hereto annexed, to $7,998 52, and the balance to the credit of this writ.

84 Wherefore I make this my return this second day of February, A. D. 1867, of this writ, credited with $1,164 93, (eleven hundred and sixty-four 93-100.)

(Signed) ALLEN JUMEL, *Sheriff.*

Inventory of moveable property.

STATE OF LOUISIANA, *Parish of Iberville*:

Inventory of moveable property attached to plantation of Austin & Adams, this day seized by the undersigned duly qualified deputy sheriff: Ten (10) mules, one already under seizure for amount of State taxes for 1865; three (3) cane carts; one (1) bagasse cart; 6 old ploughs; 2 harrows; 1 fluke; 6 old hoes; 7 axes; 6 spades; lot of old gearing, and about thirty acres, (30) acres of cane cut down and in winrow, said to belong and claimed by Judge Jas. L. Cole, of the parish of Iberville.

Thus done and inventored this twelfth day of December, A. D. 1866.

(Signed) T. E. GRACE, *D'y Sheriff.*

Certificate of Recorder of mortgages.

RECORDER'S OFFICE, *Parish of Ibervill:*

I, the undersigned recorder, do hereby certify that on the
85 record of mortgages under my charge, there exists, recorded

in the name of, and against Austin & Adams, affecting the following described, to wit:

A certain tract of land or plantation established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the Mississippi river, four miles below the town of Plaquemine, measuring six arpents and five eights of an arpent, in front by a depth of forty arpents between parallel lines, of the first concession with all the alluvial deposit or batture already formed, or to be formed, in front of said plantation, and a second depth or concession of forty arpents in depth, and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. Bissell & Moore, and below by lands of Dr. Charles Clement, and in the rear by land of Onezine Landry & Co., and others, together with all the buildings and improvements thereon being and belonging.

The following mortgages and no others, to wit:

1°. One legal mortgage in favor of the minor children of Wm. C. Adams, deceased, resulting from the appointment of Wo. C. Adams,
as tutrix of her children, as per certificate of the clerk of the
86 clerk of the 6th District Court for the sum of $83,158 00, as
per record of mortgages, book No. 5, entry 214, May 14th, 1856.

2°. One special mortgage in favor of the minors, Marth Emma Adams and Eliza Ann Adams, as follows, to wit:

1°. In favor of Martha Emma Adams for the sum of eight thousand nine hundred and ninety-eight 26⅔-100 dollars, being the amount in principal and interest coming to her in the succession of her deceased father, Wm. C. Adams, up to the 14th June, 1861, with interest at 8 per cent. per annum thereafter until paid, which mortgage bears on the 19-160 part of the land above described the share of said minor.

2°. In favor of Ann Eliza Adams for the sum of twelve thousand nine hundred and ninety-seven 60⅓-100 dollars, being the amount in principal and interest coming to her in the succession of her deceased father, Wm. C. Adams, up to the 14th June, 1866, with interest thereafter until paid, which mortgage bears on the 19-160 part of the land above described, the share of said minor, as per book of mortgages, No. 7, entry No. 40, July 11th, 1859.

3°. One special mortgage in favor of Edward J. Gay & Co., for the sum of one thousand and four hundred and sixty-seven 06-100 dollars, with interest as specified, in the act of mortgage as per record of
mortgages. Book No. 8, entry No. 67, April 9th, 1861.

87 4°. Another special mortgage in favor of Odillon Labauve
for the sum of thirteen thousand and eight hundred dollars, represented by the following notes bearing interest at the rate of eight per cent. per annum after their respective maturities until paid, viz:

One note due 20 May, 1864, for					$5,200
One " due	"	"	"		4,400
One " due	"	"	"		4,200
Equal amount to mortgage debt					$13,800

as per record of mortgages, book No. 8, entry No. 186, May 20th, 1862.

5°. Another special mortgage in favor of Christopher Adams, jr., for the sum of twenty-eight thousand one hundred and sixty dollars, represented by the following notes, to wit:

One note, due 1st April,	1850, for		$1,760
One note, due "	1851, for		7,260
One note, due "	1852, for		6,820
One note, due "	1853, for		6,380
One note, due "	1854, for		5,940
Equal amount to mortgage debt			$28,160

All said notes bearing interest at eight per cent. per annum, after their respective maturities, until paid, as per act of mortgage re-inscribed in book of mortgages, No. 8, entry No. 332, May 18th, 1866.

6°. One judicial mortgage in favor of Hebert & Mayot, for the sum of two hundred and ninety-three 64-100 dollars, with legal interest thereon from the 4th day of March, 1862, and costs
88 of suit, as per book of judicial mortgages, No. 4, entry No. 179, May 11th, 1866.

7°. Another judicial mortgage, in favor of J. McWilliams & Co., for the sum of two thousand forty-one 56-100 dollars, with interest at eight per cent. per annum, from 1st March, 1860, and cost of suit as per book of mortgages, (judicial,) No. 4, entry No. 240, May 14th 1866.

8°. Another judicial mortgage in favor of J. McWilliams & Co., for the sum of eight hundred and twenty-three 31-100 dollars, with 8 per cent. per annum from 1st March, 1860, and costs of suit, as per book of mortgages, (judicial,) No. 4, entry No. 241, May 14th, 1866.

9°. Another judicial mortgage in favor of J. McWillians & Co., for the sum of one thousand one hundred and fifteen 00-100 dollars, with 8 per cent. per annum from 1st March, 1860, and costs of suit to be taxed, as per book of judicial mortgages, No. 4, entry 246, 14th May, 1866.

10°. Another judicial mortgage in favor of Samuel Warden, for the sum of one thousand and sixty-eight 33-100 dollars, with interest at 8 per cent. per annum on $58 50, from 21st March, 1862, on the sum of $50, from the 15th July, 1862; at the same rate on the sum of six hundred and sixty-five 45-100 dollars from 17th April, 1861; and like interest on the sum of $294 38-100 from June, 1862, and costs of
suits, to be taxed as per book of judicial mortgages, No. 4.
89 entry 262, May 14, 1866, recorded against J. W. Austin.

11°. Another judicial mortgage in favor of William Bowman, for the sum of one thousand dollars, with interest at 8 per cent. per annum from 1st March, 1860, and costs of suit, as per book of judicial mortgages, No. 4, entry No. 276, May 14th, 1866, recorded against John W. Austin.

12°. Another judicial mortgage in favor of E. Reilly & Co., for the sum of two hundred and nine 69-100 dollars, with interest at the legal rates from the 4th day of January, 1862, and costs of suit, as per book of judicial mortgage, No. 4, entry No. 281, May 14th, 1866, recorded against John W. Austin.

13°. Another judicial mortgage in favor of E. Reilly & Co., for the sum of four hundred and forty-one 40-100 dollars, with legal interest from the fourth day of January, 1862, and costs of suit, as per book of judicial mortgages, No. 4, entry No. 282, May 14th, 1866, recorded against W. Wm. C. Adams.

14th. Another judicial mortgage in favor of Ann Eliza Adams, for the lollowing sums: 1°. For the sum of seven thousand nine hundred and seventy-three 22-100 dollars, with interest at 5 per cent. per annum from 12th January, 1867, with a legal or tacit mortgage in favor of plaintiff on all the property of defendant to date from the day of her appointment as tutrix, to wit, the 6th day of October, 1854. 2°. For the further sum of eight thousand three hun-
90 dred and thirty-one 82-100 dollars, amount of the note of defendant, dated June 14th, 1859, payable seven years after date, bearing interest at 8 per cent. per annum after maturity, as per book of judicial mortgages, No. 4, entry 451, January 15th, 1867, recorded against Wo. Wm. C. Adams.

Witness my hand and seal of office this 1st February, A. D. 1867.

(Signed) AUSTIN HUNT, *Recorder*.

State of Louisiana, parish of Iberville, fifth judicial District Court.

Original notice to appoint appraisers.

EDWARD J. GAY & CO.
vs.
AUSTIN & ADAMS. } No. 885.

To EDWARD J. GAY, representing plaintiffs J. W. AUSTIN and ELIZA S. ADAMS:

You are hereby notified to appoint your appraiser to appraise the property seized and now held fore sale in the above-entitled and numbered cause, said appraisement to be made at the court-house sheriff's office) of said parish on the first day of February next, 1867, at 10 o'clock a. m. sheriff's office, parish of Iberville, this 24th day of January, 1867.

(Signed) T. E. GRACE, *D'y Sheriff*.

91 Served on the 29th day of January, 1867, a true copy hereof on E. J. Gay, by leaving same at his domicile in hands of Mrs.

E. J. Gay, a white person, over the age of fourteen years, there residing and personally known to me, said E. J. Gay not being present at the time, at the parish of Iberville, and on Mrs. E. Adams, in person, at the parish of Iberville, and on J. W. Austin, by leaving same at his domicile in hands of Miss A. E. Adams, a white person, over the age of fourteen, there residing, and personally known to me, said J. W. Austin not being present at the time at the parish of Iberville.

(Signed) OMER ROTH, *D'y Sheriff.*

State of Louisiana, parish of Iberville, 5th Jud'l Dist. Court.

Process verbal of appraisement.

EDWARD J. GAY & Co.
vs.
AUSTIN & ADAMS. } No. 885.

You, and each of you, do solemnly swear that you will make a true and just appraisement of the property seized and held for sale in the above entitled and numbered suit and hereinafter described according to the best of your understanding, so help you God.

92 A certain tract of land or plantation established and cultivated as a sugar estate lying and situated in the parish of Iberville, on the right bank of the Mississippi, four miles below the town of Plaquenine, mesuring six arpents and five-eights of an arpent in front by a depth of forty arpents between parallel lines of the first concession, with all the alluvial deposit or batture already formed or to be formed in front of said plantation, and a second depth or concession of forty arpents in depth and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies and is bounded above by land of Messrs. F. N. Bissell & H. E. Moore, and below by lands of Dr. Charles Clement, and in the rear by land of Onezime Landry & Co., and others, together with all the buildings and improvements thereon, and the following moveables thereto attached: 9 mules, 3 cane carts, 1 bagasse cart, 6 old ploughs, 2 harrows, 1 fluke, 6 old hoes, 7 axes, 6 spades, lot of old gearing and about thirty acres of cane cut down and in winrow, said to belong and claimed by judge J. L. Cole, of this parish.

For plaintiff, Wm. M. Thompson, umpire, L. Bernard.
For defendant, Lucien Landry.

We the undersigned appraisers, appraise said property at the price and sum of thirteen thousand two hundred and fifty dollars ($13,250) or the 38-160 part thereof at $3,146 86 and the other 122-160 thereof a ($10,103 14-100.)

93 For plaintiff, Wm. M. Thompson, umpire, L. Bernard.
For defendant, Lucien Landry.

Sworn to and subscribed before me this 2d day of February, A. D. 1867.

(Signed) ALLEN JUMEL, *Sheriff.*

Fifth Dist. Court, parish of Iberville, State of Louisiana.

Order of Hon. R. T. Posey, Judge 5th Jud. Dist.

EDWARD J. GAY & Co.
vs.
AUSTIN & ADAMS. } Order.

Upon reading the foregoing petition, it is ordered that Allen Jumel, sheriff of the parish of Iberville, offer for sale the property seized by him in the case of Edward J. Gay & Co. *vs.* Austin & Adams, by virtue of an order of seizure and sale from this court, dated the third day of December, 1866, in the following manner:

1st. Offer all the property seized together, and if a bid is made therefor, of such an amount that two nineteen one hundred and sixtieth parts of the bid, will discharge the special mortgage existing on these undivided fractional parts then adjudicate, otherwise not.

2d. Offer the undivided two nineteen one hundred and sixtieth parts which are burdened with special mortgages, and if no sale thereof can be effected for the amount of the special mort-
94 gages existing thereon do not adjudicate.

3d. Offer for sale the undivided one hundred and twenty-two one hundred and sixtieth parts of said plantation and other property attached thereto and seized, and if a legal bid be made therefor adjudicate it.

Let separate appraisments be made of the different portions offered for sale.

Jan. 31st, 1867.

(Signed) R. T. POSEY,
Judge 5th Jud. Dist.

A true copy. clerk's office, February 7th, 1867.

(Signed) ALEX. HEBERT, *D'y Clerk.*

Lubin Bernard's protest to Allen Jumel, sheriff.

The undersigned, having purchased from Messrs. Austin & Adams, and paid for the same a quantity of bricks, pickets and staves, say 5,000 bricks, 600 pickets and posts, and 2,500 staves, which have not as yet been taken away by him, he therefore claims the same as his property and requests you to notify bidders and whoever may become the purchaser of the plantation which is to be offered for sale by you this day that said property thus bought by him is reserved and to be taken away by him as soon as he can conveniently do so.

Yours, truly, &c.,

95 (S'd) LUBIN BERNARD.

February 2d, 1867.

Circular No. 16.—*Order of Capt, F. A. Osborne ag't Freedmen's Bureau.*

OFFICE BUREAU REFUGEES FREEDMEN AND ABANDONED LANDS, PARISH OF IBERVILLE, WEST BATON ROUGE, LA PLAQUEMINE, *January* 31*st*, 1867.

In pursuance of par. No. 19, Cir. No. 29, dated H'dq'rs Bureau R. F. and A. L., New Orleans, La., Dec. 4th, 1865, and Cir. No. 12, same h'dq'rs, dated Nov. 26, 1866, Mr. Allen Junnell, sheriff of the parish of Iberville, La., is hereby directed to retain in his hand, out of the proceeds of sale of sugar cane, the property of Austin & Adams, of Iberville parish, La., seized by sheriff under two writs of fii. fa., in suits of Ed. J. Gay & Co. *vs.* Austin & Adams, No. 885, and Ann Eliza Adams *vs.* Eliza S. Irby, wid. of W. C. Adams, tutrix No. 826. so much of said proceeds as will pay and fully satisfy the claims of freedmen, laborers employed by said Austin & Adams during the year 1866, whose privileged claims and detailed account is herewith presented, amounting to seven hundred and fifty-three dollars and eighty cents; ($753 80.)

96 (Signed) F. A. OSBURN,
V. R. C., B'vt Capt. U. S. V., Agent Bureau R. F. & A. L.

Received January 31st, A. D. 1867, (as endorsed.)

Account of freedmen.—Amount of unpaid wages due freedmen employed by Austin & Adams, of Iberville parish, La., during the year 1866.

	Jan.	Feb.	March.	April.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.	Total am't.
Isham Johnson	$7 60	$7 60	$7 60	$7 60	$7 60	$7 60	$7 60	$7 60	$7 60	$7 60	$15 20	$9 50	$100 70
Preston Johnson	2 90	3 80	4 45	4 15	4 25	4 25	4 17	4 50	4 07	4 50	7 60	------	48 68
Martin Sissell	2 80	6 15	7 25	7 10	7 25	6 03	6 15	6 80	6 96	6 15	13 30	------	75 94
Abram Leblanc	3 30	5 20	5 82	5 47	5 60	5 12	5 35	5 95	5 35	5 95	8 10	------	61 21
Jefferson Scott	3 70	5 00	4 88	5 22	5 10	5 12	5 35	3 55	3 92	5 95	8 10	------	55 89
Wyatt Ellis	------	4 64	5 82	5 22	5 60	5 47	5 45	5 95	5 35	5 95	11 65	1 45	62 55
Henry Ellis	------	3 92	4 90	4 60	4 70	4 50	4 60	5 00	4 50	5 00	8 40	4 80	54 92
George Wiggins	------	5 00	5 82	5 47	5 60	5 47	4 25	4 75	5 35	5 95	11 90	2 40	61 96
Ambrose Johnson	3 06	4 60	5 35	4 15	4 60	4 38	3 40	Sick	3 94	------	4 63	------	42 81
Jerry Myres	1 63	3 08	4 25	2 89	4 08	3 34	3 30	4 35	4 07	4 50	3 65	------	39 14
James Powell	------	4 87	5 82	5 57	5 25	5 12	5 35	5 70	5 77	5 70	11 40	------	60 55
Jesse Hawkins	1 10	2 37	2 20	2 08	2 35	1 75	2 35	2 15	2 35	2 35	4 75	------	25 80
Nea Moore	------	------	------	------	------	------	3 10	5 70	4 70	5 95	11 40	------	30 85
Am't wages due	------	------	------	------	------	------	------	------	------	------	------	------	$721 00
Am't due freedmen :	------	------	------	6 20	6 65	6 45	7 05	5 50	95	------	------	------	32 80

5 per cen. tax July, Aug., Sept., Oct., Nov., Dec. refunded.

Total amount due freedmen $753 80

97 The above account is correct.

(Signed) F. A. OSBORN,

Bureau R. F. & A. L., V. R. C., Bv. Capt., U. S. N. Agent,

State of Louisiana, parish of Iberville, fifth judicial District Court.

Receipt of Capt. Osborn to sheriff.

EDWARD J. GAY & Co.
vs.
AUSTIN & ADAMS.

ANN ELIZA ADAMS
vs.
ELIZA S. IRBY, widow WM. C. ADAMS, tutrix.

Received Plaquemine, February 12th, 1867, of Thomas E. Grace, d'y sheriff, five hundred add seventy-four 77-100 dollars am't, retained by virtue of circular order, No. 16 from this office, directing the retention by the sheriff of this parish of Iberville the sum of $753 80-100 from proceeds of the sale of sugar cane seized in said above suit to pay the hire of freedmen in the production of the same, said sum of $574 77-100 being the pro rata portion of the 122-160 parts of said cane sold to Edward J. Gay in said suit No. 885 on Saturday the 2d inst.

(Signed) F. A. OSBORN,
V. R. C., B't Captain, U. S. V., Agent Bureau R. F. & A. L.

Ret'd and filed Feb. 12, '67.
(Signed) ALEX. HEBERT, *D'y Clerk.*

98 *Explanation.*

The above sum of five hundred and seventy-four 77-100 dollars, paid to Capt. F. A. Osborn, is the pro-rata of the debt due the freedmen employed by said Austin & Adams, say the one hundred and twenty-two-one hundred and sixtieth part (122-160) of $753 80-100, and was paid out of the proceeds of the sale of the whole 122-160 parts of the property sold including the seed cane.

April 1st, '67.
(Signed) F. E. GRACE, *D'y Sheriff.*

Ret'd and filed April 1st, 1867.
(Signed) E. A. MARIONNEAUX, *Clerk.*

Petition of Edward J. Gay and others.

To the hon. judge of the Fifth Judicial District Court of Louisiana in and for the parish of Iberville:

The petition of Edward J. Gay, a resident of said parish of William Edwards, residing in the city of New Orleans, and William T. Gay, a resident of Saint Louis, Missouri, members of the late commercial firm of Saint Louis, Mo., styled Edward J. Gay & Co. re-respectfully represents:

That heretofore, to wit, on the third day of Dec., 1866, your petitioners obtained from your honor an order of seizure and sale, direct-

ing the sheriff of Iberville parish to seize and sell a certain sugar plantation situated in said parish, belonging to Austin &
99 Adams, fronting on the Mississippi river, and bounded above by lands of Moore & Bissell, and below by lands of Dr. Charles Clement, in order to pay petitioners the sum of fourteen hundred and sixty-seven 6-100 dollars with eight per cent. interest from the 20th day of May, 1862, the payment of which is secured by special mortgage on said plantation.

Now your petitioners represent that it appears from the recorder's certificate of mortgages, affecting the said property, that two small portions thereof, to wit: Two nineteen-one hundred and sixtieth parts undivided are specially mortgaged for over eight thousand dollars each, making over sixteen thousand dollars of special mortgage, affecting only the small fractional portions of said property mentioned above.

Petitioners allege that the amount for which said small portions are specially mortgaged is more than the whole of the said plantation will sell for.

Petitioners represent that the other portion of said plantation, unaffected by said special mortgage, may be sold, and petitioners collect their claims against Austin & Adams, if it can be offered for sale by the sheriff separate from the specially mortgaged portions above-mentioned. Petitioners allege that, by offering the property for sale in this manner no one can be injured, but all parties interested in the property the debtors, as well as creditors may
100 be injured, if this course be not pursued; for the reason that if a sale is not effected at the offering, which is to be made by the sheriff on the 1st Saturday of February next, in consequence of the special mortgage mentioned, a good quantity of seed cane, which is now in windrow on the plantation, may be materially injured, if not totally lost, by the delay which will necessarily happen before a sale can afterwards be effected of the plantation.

Petitioners represent that the sheriff of Iberville is of opinion that he can not offer the property seized for sale in separate parts, as indicated by the parts specially mortgaged, and the parts not so mortgaged.

Now petitioners pray for an order commanding the sheriff of Iberville parish, at the sale of said plantation, to take place on the 1st Saturday of Feb. next agreeably to his advertisements, to offer first for sale the whole of said plantation, and the moveable property seized as attached thereto together, and should a sufficient amount not be bid therefor, as that two-nineteen one hundred and sixtieth parts of the bid shall discharge the special mortgages on said fractional part, he shall not adjudicate, but shall then offer for sale the two-nineteen one hundred and sixtieth parts undivided, and if no sale thereof can be effected for the amount of the special mort-
101 gages existing on these portions there must be no adjudication of those portions; then they pray that he be ordered finally to offer for sale the undivided one hundred and twenty-two one hundred and sixtieth parts of said plantation and property seized by

him. The said portions offered separately to be appraised as the law directs.

And they pray for general relief.

(Signed) SAMUEL MATTHEWS,
Att'y for Petitioners.

Order.

Upon reading the foregoing petition, it is ordered that Allen Jumel, sheriff of the parish of Iberville, offer for sale the property seized by him in the case of Edward J. Gay & Co. *vs.* Austin & Adams by virtue of an order of seizure and sale from this court dated the third day of December, 1866, in the following manner:

1st Offer all the property seized together, and if a bid is made therefor of such an amount that two nineteen-one hundred and sixtieth parts of the bid will discharge the special mortgages existing on those undivided fractional parts then adjudicate, otherwise not.

2d. Offer the undivided two nineteen-one hundred and sixtieth parts which are burdened with special mortgages, and if no sale thereof can be effected for the amount of the special mortgage existing thereon, do not adjudicate.

102 3d. Offer for sale the undivided one hundred and twenty-two one hundred and sixtieth parts of said plantation and other property attached thereto and seized, and if a legal bid be made therefor, adjudicate it. Let separate appraisements be made of the different portions offered for sale.

Jan. 31st, 1867.

(Signed) R. T. POSEY, *Judge 5th Jud. Dist.*

Filed February 2d, 1867.

(Signed) E. A. MARIONNEAUX, *Clerk.*

I hereby accept service of the foregoing petition and order this 2d day of February, 1867.

(Signed) ALLEN JUMEL, *Sheriff.*

I, E. A. Marionneaux, clerk of the court aforesaid, do hereby certify that the foregoing, with twenty-eight pages, contain a true and complete transcript of all proceedings had, and all documents filed, in the suit wherein Edward J. Gay & Co. are plaintiffs and Austin & Adams are defendants, No. 885, on the docket of our said court.

Given under my hand and seal of said court this 1st day of April, A. D. 1867.

E. A. MARIONNEAUX, *Clerk.*

103 Document "K" is transcribed at page 18.

Document "L."

[Circular No. 18.]

OFFICE BUREAU REFUGEES, FREEDMEN, AND ABANDONED LAND,
PARISHES OF IBERVILLE AND WEST BATON ROUGE, LA.,
Plaquemine, February 8th, 1867

I. In continuation of cir. No. 16, from this office dated January 31st, 1867, and in order to secure immediate payment of wages due freedmen interested, for labor performed during the year 1866, Mr. E. J. Gay of Iberville parish, La., having, under operations of the sheriff, been placed in possession of the whole property included in the two writs of fi. fa., Nos. 885 and 886, and reaping the advantages of same.

II. He is hereby directed to retain in his hands and to pay to the freedmen the balance of their claim not paid by sheriff, amounting to one hundred and seventy-nine dollars and three cents, ($179 03,) and for which the said freedmen have a lien on the thirty-eight one hundred and sixtieth (38-160) balance of crop made on the plantation of Austin & Adams for the year 1866.

F. A. OSBOURN,
V. R. C., Bvt. Capt. U. S. V., Agent Bureau R. F. & A. L.

104 Received, parish of Iberville, 12th Feb'ry, 1867, of Edward J. Gay, one hundred seventy-nine (03-100) dollars, being amount of within order to use in paying the freedmen the balance due them for labor on the plantation of Austin & Adams in this parish, and for which they have a lien on the crop made on said place in 1866, prior to any other lien.

F. A. OSBOURN,
V. R. C., Bvt. Captain U. S. V., Agent Bureau R. F. & A. L.

Hearing & Order Continuance.—From minutes June 4, 1867.

AVENDANO HERMANOS
vs.
E. J. GAY *et al.*
} No. 5,109.

This cause came up for trial, Geo. L. Bright for pl'ffs, Race, Foster, and E. T. Merrick for def'ts; when, after hearing pleadings, evidence, and argument, the cause is continued till to-morrow, at 11 a. m.

Cause resumed and submitted.—From minutes June 4, 1867.

105 AVENDANO BRO'S
vs.
E. J. GAY *et al.*
} No. 5,109.

This cause, continued from yesterday, came up again, Geo. L. Bright for plantiffs, Race, Foster and E. T. Merrick for def'ts; when, after hearing further argument, the court took time to consider, and requested the attornies to furnish their authorities without delay.

U. S. Circuit Court for the 5th circuit and district of Louisiana.

Bill of Exception.—Filed June 5th, 1867.

AVENDANO BROTHERS
vs.
EDWARD J. GAY. } No. 5,109.

Be is remembered, that on the trial of this cause the plaintiffs offered to prove by the testimony of James L. Cole, on file, taken under commission in this cause, and the testimony of John W. Austin, taken in writing, January 29, 1867, also on file the deposition of J. M. Rils, taken under a commission, and document A, B, C, D, and E, (the same being all the evidence offered by the plaintiffs,) to prove that said plaintiffs sold said cane, the subject of controversy, as the agents and factors of said Austin & Adams, to said
106 James L. Cole, and that said sale was subseqently rescinded on account of the seizure of the said cane under the order of seiznre and sale issued by plaintiff; and also to prove that plaintiffs had a privilege upon said cane for supplies furnished to said Austin & Adams in making said cane crop by the plaintiffs, and that they were injured by said seizure; whereupon the defendant then and there, by counsel, objected to the introduction of said depositions, testimony of said Austin, and documents, and each of them as produced, on the ground that the only legal ground of recovery, pretended, alledged, and set forth in plaintiffs petition was their alledged ownerships of the said cane in virtue of the pretended alledged transfer by said Austin and Adams to the plaintiffs, and that said supposed agency of said plaintiffs in the supposed sale of said cane to said James L. Cole and the recision thereof, and the supposed privilege for supplies could not, if established in manner and form as alledged in plaintiffs petition, maintain the plaintiffs action, because if plaintiffs were owners of said cane, as alledged by them, then they had no privilege, it being inconsistant with their allegation of ownership; and because said plantiffs have expressly alledged their
107 right of recovery to depend upon their ownership, as supposed by them, of said cane, and the proof now offered is inconsistent with their said allegations in their petition, and as agents plaintiffs have no right to stand in judgment for their principals, nor as supposed privilege creditors, to prevent the sale of property by other creditors; and furthermore, the various portions of the testimony of James L. Cole, in his answers to interrogatories, were objected to on the ground also that it was secondary testimony and hearsay.

But the court was of the opinion that the testimony was admissible for the purposes offered except said hearsay testimony of James L. Cole, embraced in brackets, which was not permitted to be read, and thereupon allowed all of said depositions, testimony, and documents in this bill of exceptions, mentioned except said excepted portions of the depositions of James L. Cole, to be read in evidence by said plaintiffs: whereupon the defendant, by counsel, excepted to the opinion of the court, admitting the said depositions, testi-

mony and documents in evidence, and praying the court to sign and seal this, his bill of exceptions, which is done this day of June, A. D. 1867, the court hereby ordering each of said depositions and documents and the testimony of said John W. Austin to be
108 certified as part of this bill of exception.

(Signed) E. H. DURELL, *Judge*.

Circuit Court of the United States, fifth circuit and district of Louisiana, April term, 1866.

Judgment.

NEW ORLEANS, *Thursday, June 20th*, 1867.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge. Absent, Hon. J. M. Wayne, presiding judge.

AVENDANO BROS. *vs.* ED. I. GAY *et al.* } No. 5,109.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that plaintiff's suit be dismissed with costs.

Judgment rendered June 20th, 1867.

Judgment signed June 25th, 1867.

(Signed) E. H. DURELL, *Judge*.

109 *Petition for writ of error and order thereon.—Filed July 9th*, 1867.

AVENDANO BROS. *vs.* EDWARD I. GAY *et al.* } No. 5,109.

To the Hon. the judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana :

The petition of Avendano Brothers respectfully shows that they are aggrieved by a final judgment against them in the suit of Avendano Brothers *vs.* Edward J. Gay *et al*, number 5,109, of the docket of this court, and are informed that there is error to their prejudice in the said judgment.

Wherefore petitioners pray that a writ of error be allowed, returnable to the United States Supreme Court at its next term upon giving bond with good and sufficient security as this honorable court may direct and order, and that Edward J. Gay be cited to answer the writ of error.

And petitioners pray for general relief.

(Signed) GEO. L. BRIGHT, *Att'y for petit'rs.*

110 A writ of error is allowed in this case as prayed, for returnable to the Supreme Court of the United States the first

Monday of December, 1867, the petitioners giving bond in the sum of five hundred dollars with good and solvent security, conditioned as the law directs.

July 9th, 1867.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed July 9th, 1867.

AVENDANO HERMANOS. *vs* ED. 1. GAY *et al.* } No. 5,109.

Know all men by these presents that we, Avendano Hermanos, as principals, and Iose Martinez del Campo, as surety, are held and firmly bound unto Edward J. Gay in the full and just sum of five hundred dollars, to be paid to the said Edward J. Gay, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ninth day of July, in
111 the year of our Lord one thousand eight hundred and sixty-seven.

Whereas lately, at a Circuit Court of the United States fifth judicial circuit, holding session in and for the district of Louisiana, in a suit depending in said Circuit Court, wherein Avendano Hermanos are plaintiffs and Edward J. Gay is defendant, judgment was rendered against the said Avendano Hermanos, plaintiffs; and the said Avendano Hermanos having obtained a writ of error and filed a copy thereof in the clerk's office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward I. Gay citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such. that if the said Avendano Hermanos shall prosecute their writ to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

[L. S.] (Signed) AVENDANO HM'S.
[S. S.] (Signed) JOSE MARTGEZ DEL-CAMPO.

Sealed and delivered in the presence of—
(Signed) L. F. BARRETT.

112 In the Circuit Court of the United States.

Statement of facts.—Filed July 16, 1867.

AVENDANO BRO'S *vs.* E. I. GAY. } No. 5,109.

The plaintiffs, commission merchants, residing in New Orleans, were in the month of October, 1866, the creditors of Austin & Adams,

planters, residing in the parish of Iberville, for supplies and advances to the amount of three thousand dollars which were used to make the thirty acres of sugar cane.

The amount of the supplies as distinct from the advances is not shown.

About the 26th day of October, A. D. 1866, the plaintiffs, as the agents of Austin & Adams, entered into the contract of that date, marked A, on file in this suit, for the sale of thirty acres of standing cane to James L. Cole, for the price of thirty-five hundred dollars, one thousand dollars of which were paid to plaintiff by said Cole, and a promissory note was given for the remainder of the consideration. Subsequently, in Dec. 31st, 1866, said contract was
113 rescinded by said Cole, and the plaintiff, as shown by the indorsements on said contract, and the money and note were returned to said Cole. Said contract and recission indorsed thereon are made a part of this statement of facts. The thirty acres of cane on Austin & Adams plantation were, subsequently to the contract, cut by them, Austin & Adams, and put up in "windrow on the place, and covered over with earth, to be used as seed cane." This cane was not enough seed cane for the place for 1867, in the event of its cultivation. Austin & Adams in 1861 mortgaged the same plantation to the firm of Edward I. Gay & Co., composed of the defendant and William F. Gay, by an instrument duly recorded.

The balance due upon this mortgage on the 20th of May, 1862, was $1,467 06, with eight per cent. interest from said date, and on the 4th day of December, A. D. 1866, Edward I. Gay & Co. obtained from the fifth judicial District Court of the State of Louisiana, in and for the parish of Iberville, an order of seizure and sale for the sale of said plantation to pay said debt.

On the eleventh day of December, A. D. 1866, the sheriff having served the previous notice required by law upon the defendant, seized said plantation with the property attached to the same by destination with said sugar cane then in windrow.

114 Document B, served upon John W. Austin and made a part of this statement of facts, was the first notice served under said order of seizure and sale. Before the seizure Mr. Gay was informed that the cane had been sold to Mr. Cole. After the seizure, but before the sale, the plaintiffs notified Mr. Gay that they had sold the cane to Judge Cole, demanded the release of the seizure, and notified him that they would hold him responsible for their claim; and this suit was subsequently commenced.

Subsequently to the institution of this suit, said plantation, together with the property seized with it, as attached to the cane by destination, and about thirty acres of cane cut down and in windrow and claimed by plaintiffs, was offered for sale, and one hundred and twenty-two one hundred and sixtieth parts thereof were sold on the 2nd day of February, 1867, to the defendant, Edward I. Gay, for the price of $10,103 77. The proceedings in said order of seizure and sale, and the documents on which the same issued, marked J, are made a part hereof, and annexed, as is also the sheriff's deed, marked G.

Out of the price of the plantation including the cane, the pur-

chaser paid as a privilege upon the same one hundred and
115 seventy-nine $\frac{03}{100}$ dollars to the freedmen, shown by document A, made a part hereof.

On the 7th of February Austin & Adams sold said Edward I. Gay the $\frac{38}{160}$ of the said seed cane and ratified the sheriff's sale, as shown by document H, made a part hereof with the endorsements thereon.

Document E was delivered to Edward I. Gay and Jumel, sheriff, on the 24th day of December, 1866, as previously stated.

At the time Gay & Co. instituted their executory process against Austin & Adams. The latter were also indebted to them for supplies and advances for previous years.

(Signed) E. H. DURELL, *Judge*.

Fifth Jud. Dist. Court.

Document "C" (Sheriff's notice to John W. Austin)—Filed in evidence June 4, 1867.

EDWARD J. GAY & CO.
vs.
AUSTIN & ADAMS. } No. 885.

STATE OF LOUISIANA, *Parish of Iberville*:

To JOHN W. AUSTIN, greeting:

116 Take notice that by virtue of and to satisfy a writ of seizure and sale to the sheriff of the parish of Iberville, directed by the honorable court aforesaid in the above-entitled and numbered cause, I have siezed and will, unless said writ be paid and satisfied within three days from date of service hereof, proceed to advertise for sale in the manner prescribed by law, all your right, title, interest, and claim in and to the following described property, to wit:

A certain tract of land or plantation established and cultivated as a sugar estate, lying and situated in the parish of Iberville, on the right bank of the river Mississippi, four miles below the town of Plaquemine, measuring six arpents and five-eights of an arpent in front by a depth of forty arpents between parallel lines of the first concession, with all the alluvial deposit or batture already formed or to be formed in front of said plantation, and a second depth or concession of forty arpents in depth and equal in superficies to the front concession, so that said plantation contains five hundred and thirty arpents in superficies, and is bounded above by land of Messrs. F. N. Bissell and H. E. Moore, and below by land of Dr. Chas. Clement, and in the rear by land of Onezine Landry & Co., together with all the buildings and improvements thereon.

Parish of Iberville, December 11th, A. D. 1866.

(Signed) T. G. GRACE, *D'y Sheriff*.

117 Circuit Court of the United States, fifth circuit and district of Louisiana.

UNITED STATES OF AMERICA:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 116 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Avendano Hermanos *vs.* Ed. I. Gay *et al.*, No. 5,109 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of August, A. D. 1867.

[SEAL.] D. URBAN, *Clerk*.

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 8th day of August, A. D. 1867.

E. H. DURELL, *Judge*.

118 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or one of you, between Avendano Brothers, plaintiffs, and Edward I. Gay, defendant, a manifest error hath happened, to the great damage of the said Avendano Brothers, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court of the United States, this 9th of July, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] D. URBAN,
Clerk of the United States Circuit Court
for District of Louisiana.

Endorsed: United States Circuit Court. No. 5,109. Avendano Brothers *vs.* Edw. I. Gay and *al.* Writ of error. Filed July 9, 1867. F. B. Vinot, d'y cl'k.

119 THE UNITED STATES OF AMERICA,
District of Louisiana:

AVENDANO HERMANOS
vs.
EDWARD I. GAY *et al.* } No. 5,109.

The President of the United States to Edward I. Gay, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein Avendano Hermanos, are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

E. H. DURELL, *Judge.*

Endorsed: United States Circuit Court. No. 5,109. Avendano Hermanos *vs.* Ed. I. Gay *et al.* Citation in error.

Marshal's return.

Received July 10th, 1867, and on the 11th day of July, 1867, served a copy of the within citation in error on Race, Foster & Merrick, esq'rs, attorneys for Ed. I. Gay *et al.*, defend'ts in error, by leaving the same in the hands of E. T. Merrick, esq., one of the above-named firm of attorneys, who accepted service of the same for the said Gay and *al.*, at the office of said attorney, No. 5 Commercial Place, in this city.

New Orleans, July 11th, 1867.

WM. EGAN,
Dep. U. S. Marshal.

117 Circuit Court of the United States, fifth circuit and district of Louisiana.

UNITED STATES OF AMERICA:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 116 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Avendano Hermanos *vs.* Ed. I. Gay *et al.*, No. 5,109 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of August, A. D. 1867.

[SEAL.] D. URBAN, *Clerk*.

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 8th day of August, A. D. 1867.

E. H. DURELL, *Judge*.

118 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or one of you, between Avendano Brothers, plaintiffs, and Edward I. Gay, defendant, a manifest error hath happened, to the great damage of the said Avendano Brothers, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court of the United States, this 9th of July, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.]

D. URBAN,
Clerk of the United States Circuit Court
for District of Louisiana.

Endorsed: United States Circuit Court. No. 5,109. Avendano Brothers *vs.* Edw. I. Gay and *al.* Writ of error. Filed July 9, 1867. F. B. Vinot, d'y cl'k.

119 THE UNITED STATES OF AMERICA,
District of Louisiana:

AVENDANO HERMANOS
vs.
EDWARD I. GAY *et al.* } No. 5,109.

The President of the United States to Edward I. Gay, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein Avendano Hermanos, are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

E. H. DURELL, *Judge.*

Endorsed: United States Circuit Court. No. 5,109. Avendano Hermanos *vs.* Ed. I. Gay *et al.* Citation in error.

Marshal's return.

Received July 10th, 1867, and on the 11th day of July, 1867, served a copy of the within citation in error on Race, Foster & Merrick, esq'rs, attorneys for Ed. I. Gay *et al.*, defend'ts in error, by leaving the same in the hands of E. T. Merrick, esq., one of the above-named firm of attorneys, who accepted service of the same for the said Gay and *al.*, at the office of said attorney, No. 5 Commercial Place, in this city.

New Orleans, July 11th, 1867.

WM. EGAN,
Dep. U. S. Marshal.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 176.

AVENDAÑO BROTHERS, PLAINTIFFS IN ERROR,

vs.

EDWARD P. GAY.

IN ERROR TO THE CIRCUIT COURT OF THE DISTRICT OF LOUISIANA.

BRIEF OF COUNSEL OF PLAINTIFFS IN ERROR.

The plaintiffs were merchants in New Orleans, and were factors of Austin & Adams, who carried on a sugar plantation in the parish of Iberville, Lousiana, and to whom plaintiffs had furnished supplies and made advances, to enable them to carry on the plantation and make a crop, in 1866, to the extent of $3,500 and upwards.

To secure plaintiffs for these advances and supplies, Austin & Adams, on 26th October, 1866, transferred thirty acres of sugar-cane to James L. Cole, who bound himself to pay the price to plaintiffs, viz, $3,500, paying $1,000 in cash, and giving his note to plaintiffs, payable in January, 1867, for $2,500. The cane was cut and left on the place, Cole not to take possession of it until January aforesaid.

Before the maturity of the note, E. R. Gay *et al.*, defendants in error here, obtained judgment against Austin & Adams, and seized the cane in question.

Plaintiffs having thus been rendered unable to deliver the

cane to Cole, he claimed the dissolution of the contract, which plaintiffs consented to, and brought suit against E. R. Gay and the sheriff who had seized the cane to recover the value. (*See* Pet., Rec., pp. 1 and 2.)

The answer of defendants is found on record, pages 3 and 4, and a supplementary answer on page 8.

The case was tried in the circuit court without a jury, judgment dismissing suit; and the plaintiff brings his writ of error. (*See* Rec., p. 48.)

The record contains a bill of exceptions, taken during the trial by the defendants, to the ruling of the court below, in admitting testimony to prove that plaintiffs, as factors of Austin & Adams, sold the cane to James L. Cole; and that the sale was subsequently rescinded on account of defendants' seizure of it; and to prove that plaintiffs had a lien and privilege upon the cane. (*See* bill of exceptions, pp. 49 and 50.)

The facts offered to be proved were clearly pertinent to the issues, and sustained the allegations of plaintiff's petition. This becomes evident from looking through the documents attached to, and made part of, the bill of exceptions, viz:

1. Deposition of James L. Cole, taken under commission. Cole purchased the cane from plaintiffs, to whom he was introduced by the planter, Austin, for $3,500—$1,000 cash, and remainder on credit. (*See* Rec., p. 15.)

2. Document A. The written contract of sale from plaintiffs to Cole, (Rec., pp. 19 and 20,) and the written argument to dissolve said contract on account of the seizure of the cane by the defendants. (*See* Rec., p. 20.)

3. The notice of order of seizure of the cane by the court, issued in the suit of Gay, the defendant in error here, against Austin. (Rec. pp. 20 and 21.)

4. The sheriff's notice of the seizure of the cane under the foregoing order. (*See* Rec., p. 53.)

5. The appointment by the sheriff of a keeper to take exclusive custody of the cane. (*See* Rec., pp. 21–2.)

The judgment of the lower court was clearly right in admitting this evidence.

The statement of facts in the case is found on the record, pages 51 to 53.

On these facts the law is in favor of the plaintiffs in error.

1. By the Louisiana Code, amended by statute, debts due for the wages of overseers on plantations, and debts due for necessary supplies furnished to any farm or plantation, for the year last past, and so much as is due for the current year, are privileged on the last crop and the crop in the ground. (*See* Louisiana Code, art. 3184; *see* sec. 1 act La. Legislature, approved March 23, 1843, Acts of that year, p. 44.)

Barret *vs.* Chaler, 2 La. An. Rep., p. 874.

2. The plaintiffs in error were creditors of Austin & Adams for plantation supplies during the very year in which the cane seized was made; the nature of their debt gave them a right, called in Louisiana a privilege, which entitled them to be preferred before other creditors, even those who had mortgages. (*See* La. Code, art. 3153.)

This privilege takes precedence of a seizure by a creditor on an execution.

See Richardson *vs.* Weiner, 5 La. An. Rep., p. 646.

The term supplies includes in its meaning that of advances, made use of in the record.

See the case of Richardson *vs.* Weiner, just quoted.

But if the word advances should be deemed money, and not necessary supplies, still, in this case, the plaintiffs in error would have a privilege upon this cane, for it was delivered to them. (*See* La. Code, art. 3214.)

See Shaw *vs.* Grant, 13 La. An. Rep., p. 52.

Respectfully submitted 22d February, 1869.

THOMAS J. DURANT,
For Plaintiffs in Error.

IN THE SUPREME COURT

OF THE UNITED STATES.

AVENDAÑO BROTHERS, PLAINTIFFS IN ERROR

VS.

EDWARD J. GAY.

Brief for the Defendant in error.

The petition of the Plaintiffs in error, who were the Plaintiffs below, states that they were the merchants and factors of Austin and Adams, sugar planters in the Parish of Iberville; that they had made advances to said Austin and Adams, to raise crops in 1865 and 1866, and that these advances exceeded $3,500, for which the Plaintiffs had a privilege upon the crop of 1866

The petition further alleges, that Austin and Adams having made in 1866 a crop of thirty acres of cane, and being unable to pay their debt to the Plaintiffs sold to them this sugar cane and they—the Plaintiffs—in turn sold it in October 26, 1866, to James L. Cole for $1000 cash, and $2560 payable on the 1st of

January following, when Cole should take possession of the same; that on the 17th of December 1866, Edward J. Gay, the Defendant in error and in the Court below, issued executory process against the land of Adams and Austin, on which the above mentioned cane had been grown and was laid up in windrow, and seized both the said land and said cane; that after said seizure the Plaintiffs in error, notified said Gay and the Sheriff of the Parish that said cane was not liable to be seized, because it had previously been sold by Austin and Adams to them, and by them to Jas. L. Cole; that Gay having refused to release said seizure, the Plaintiffs in error were unable to carry out their contract with Cole and were forced to rescind it, and that by these doings of the Defendant Gay, they had suffered damages to the extent of the value of said cane, viz: $3,500, for which they prayed judgment.

This petition, by itself, shows that the Plaintiffs have no right of action.

I. The Plaintiffs claim that they first had a privilege on the cane for their advances. But this privilege was lost by their becoming, as they further claim, the owners of the cane.—Civil Code of Louisiana, Art. 3244.

II. The Plaintiffs thereafter present themselves as the purchasers of the cane, under a verbal contract with Austin and Adams, not followed by delivery.

The Defendant in error obtained from the competent Court and put into the hands of a Sheriff executory process, under under which the land and the cane windrowed on it were seized. He had evidently what is called in the law of Louisiana an Act of mortgage, importing confession of judgment—Code of Practice, Art. 732 to 734—giving him a right to the immediate

seizure and judicial sale of the mortgaged property on the maturity of the debt. This mortgage attached not only to the land, but also to the cane which was windrowed on it, and therefore was an immovable by destination—C. C. 459.

On sugar plantations, at the crop time, a certain quantity of cane is always laid down, in a manner to protect it against the effect of the winter, technically called "windrowing", and this cane is used in the succeeding spring for planting.

The petition alleges that *after* said seizure the Plaintiffs notified Gay that Austin and Adams had intended to give a different destination to this cane, which would have detached it from the realty and made it personal property. We know not at what precise time this information was given to him, but it was confessedly, after he had by his judicial seizure acquired the possession of the cane.—Art. 2243 of the Civil Code is in these words "sales or exchanges of personal property are void against *bona fide* purchasers and creditors, unless possession is given before such *bona fide* purchaser or creditor acquires his right by possession."

The cases of Jorda vs. Lewis—1 Annual Rep. 58, and Lambeth vs. Wells 12 Rob. 51, are precisely in point.

III. If after this review of the petition the Court should think proper to look further into the case, it would search in vain for materials for a decision.

There is, indeed, a bill of exception in the record, but it was taken by the Defendant, and cannot avail the Plaintiffs in error.

There is also a statement of facts on page 51 of the Record. The writ of error was allowed on the 9th of July—Rec. p. 50.—The citation in error was issued on the 10th of July and served on the following day.—Rec. p. 56— and the statement of facts

was filed on the 16th of July. We may therefore aptly close these remarks with, and we should perhaps have confined them to the followiug extract from the decision of this Court in Généres & Bonnemer, delivered last term.

"To permit the Judge to make a statement of facts on which the case shall be heard here, after the case is removed to this Court by the service of the writ of error, or even after it is issued, would place the rights of parties who have judgments of record, entirely in the power of the Judge, without hearing and without remedy This statement of facts, filed without consent of the parties, must be treated as a nulity ; and, as there is nothing on which the Court below can be predicated, the judgment must be affirmed."

Respectfully submitted,

LOUIS JANIN,

Of Counsel for Defendant in error.